

**ARTICLE 1**  
**COLORADO CONSUMER PROTECTION ACT**  
(Includes changes from 2010 General Assembly)

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**PART 1**  
**CONSUMER PROTECTION -- GENERAL**

**6-1-101. Short title.** This article shall be known and may be cited as the "Colorado Consumer Protection Act."

**6-1-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property.

(2) "Article" means a product as distinguished from a trademark, label, or distinctive dress in packaging.

(2.5) "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving, and Christmas.

(2.7) "Buyers' club" means any person engaged in advertising or selling memberships that provide an exclusive right to members to purchase goods, food, services, or property at purported discount prices.

(3) "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

(4) "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

(4.1) "Dance studio" means any person engaged in the advertisement or sale of dance studio services.

(4.2) "Dance studio services" means instruction, training, or assistance in dancing; the use of dance studio facilities; membership in any group, club, or association formed by a dance studio; and participation in dance competitions, dance showcases, trips, tours, parties, and other organized events and related travel arrangements.

(4.3) "Discount health plan" means a program evidenced by a membership agreement, contract, card, certificate, device, or mechanism, which offers health care services, as defined in section 10-16-102 (22), C.R.S., or related products including, but not limited to, prescription drugs and medical equipment, at purported discounted rates from health care providers advertised as participating in the program. A "discount health plan" does not include a program in which a participating provider has agreed, as a condition of his or her participation in the program, to negotiate the prices to be charged for his or her services directly with consumers in the program and the provider is not required to offer discounted prices for his or her services as part of the program.

(4.4) "Elderly person" means a person sixty years of age or older.

(4.5) "Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or part for human consumption.

(4.6) "Health club" means an establishment which provides health club services or facilities which purport to improve or maintain the user's physical condition or appearance through exercise. The term may include, but shall not be limited to, a spa, exercise club, exercise gym, health studio, or playing courts. The term shall not apply to any of the following:

(a) Any establishment operated by a nonprofit organization or public or private school, college, or university;

(b) Any establishment operated by the federal government, the state of Colorado, or any of the state's political subdivisions;

(c) Any establishment which does not provide health club services or facilities as its primary purpose or business; or

(d) Health care facilities licensed or certified by the department of public health and environment pursuant to its authority under section 25-1.5-103, C.R.S.

(4.7) "Health club facilities" means equipment, physical structures, and other tangible property utilized by a health club to conduct its business. The term may include, but shall not be limited to, saunas, whirlpool baths, gymnasiums, running tracks, playing courts, swimming pools, shower areas, and exercise equipment.

(4.8) "Health club services" means services, privileges, or rights offered for sale or provided by a health club.

(4.9) "Manufactured home" shall have the same meaning as set forth in section 42-1-102 (106) (b), C.R.S.

(5) "Mark" means a word, name, symbol, device, or any combination thereof in any form or arrangement.

(5.5) "Motor vehicle" shall have the same meaning as set forth in section 12-6-102 (12), C.R.S.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, or two or more thereof having a joint or common interest, or any other legal or commercial entity.

(7) "Promoting a pyramid promotional scheme" means inducing one or more other persons to become participants, or attempting to so induce, or assisting another in promoting a pyramid promotional scheme by means of references or otherwise.

(8) "Property" means any real or personal property, or both real and personal property, intangible property, or services.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration in excess of fifty dollars for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. Ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme are not within this definition.

(10) "Sale" means any sale, offer for sale, or attempt to sell any real or personal property for any consideration.

(11) "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

(11.2) Repealed.

(11.5) "Time share" means a time share estate, as defined in section 38-33-110 (5), C.R.S., a time share use, as defined in section 12-61-401 (4), C.R.S., or any campground or recreational membership which does not constitute the transfer of an interest in real property.

(12) "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

(13) "Trade name" means a word, name, symbol, device, or any combination thereof in any form or arrangement used by a person to identify his business, vocation, or occupation, and to distinguish it from the business, vocation, or occupation of others.

(13.5) "Unavoidable delay" means inclement weather and other events outside the control of the buyer or seller.

(14) "Used motor vehicle" shall have the same meaning as set forth in section 42-6-201 (8), C.R.S.

**6-1-103. Attorney general and district attorneys concurrently responsible for enforcement.** The attorney general and the district attorneys of the several judicial districts of this state are concurrently responsible for the enforcement of this article. Until the Colorado supreme court adopts a venue provision relating to this article, actions instituted pursuant to this article may be brought in the county where an alleged deceptive trade practice occurred or where any portion of a transaction involving an alleged deceptive trade practice occurred, or in the county where the principal place of business of any defendant is located, or in the county in which any defendant resides.

**6-1-104. Cooperative reporting.** The district attorneys may cooperate in a statewide reporting system by receiving, on forms provided by the attorney general, complaints from persons concerning deceptive trade practices listed in section 6-1-105 and part 7 of this article and transmitting such complaints to the attorney general.

**6-1-105. Deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

- (a) Knowingly passes off goods, services, or property as those of another;
- (b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;
- (c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;
- (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

- (f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
- (h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;
- (i) Advertises goods, services, or property with intent not to sell them as advertised;
- (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;
- (l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;
- (m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;
- (n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:
  - (I) Refusal to show the goods or property advertised or to offer the services advertised;
  - (II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;
  - (III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;
  - (IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;
  - (V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;
  - (VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or
  - (VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;
- (o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages;
- (p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call;
- (p.3) to (p.7) Repealed.
- (q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme;



(r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are "guaranteed for life" or have a "lifetime guarantee" shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of "life" or "lifetime" as used in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer of warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.

(s) and (t) Repealed.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

(v) Disburses funds in connection with a real estate transaction in violation of section 38-35-125 (2), C.R.S.;

(w) Repealed.

(x) Violates the provisions of sections 6-1-203 to 6-1-205 or of part 7 of this article;

(y) Fails, in connection with any solicitation, oral or written, to clearly and prominently disclose immediately adjacent to or after the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial sales of the item were made in the person's trade area or in the trade area in which the item or prize is to be received within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is soliciting the sale of a newspaper, magazine, or periodical of general circulation, or to a promotion soliciting the sale of books, records, audio tapes, compact discs, or videos when the promoter allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund within thirty days after the receipt of the returned merchandise or when a membership club operation is in conformity with rules and regulations of the federal trade commission contained in 16 C.F.R. 425.

- (z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;
- (aa) Fails, in connection with the issuing, making, providing, selling, or offering to sell of a motor vehicle service contract, to comply with the provisions of article 11 of title 42, C.R.S.;
- (bb) Repealed.
- (cc) Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section 6-1-304;
- (dd) Repealed.
- (ee) Intentionally violates any provision of article 10 of title 5, C.R.S.;
- (ee.5) to (ff) Repealed.
- (gg) Fails to disclose or misrepresents to another person, a secured creditor, or an assignee by whom such person is retained to repossess personal property whether such person is bonded in accordance with section 4-9-629, C.R.S., or fails to file such bond with the attorney general;
- (hh) Violates any provision of article 16 of this title;
- (ii) Repealed.
- (jj) Represents to any person that such person has won or is eligible to win any award, prize, or thing of value as the result of a contest, promotion, sweepstakes, or drawing, or that such person will receive or is eligible to receive free goods, services, or property, unless, at the time of the representation, the person has the present ability to supply such award, prize, or thing of value;
- (kk) Violates any provision of article 6 of this title;
- (ll) Knowingly makes a false representation as to the results of a radon test or the need for radon mitigation;
- (mm) Violates section 35-27-113 (3) (e), (3) (f), or (3) (i), C.R.S.;
- (nn) Repealed.
- (oo) Fails to comply with the provisions of section 35-80-108 (1) (a), (1) (b), or (2) (f), C.R.S.;
- (pp) Violates article 9 of title 42, C.R.S.;
- (qq) Repealed.
- (rr) Violates the provisions of part 8 of this article;
- (ss) Violates any provision of part 33 of article 32 of title 24, C.R.S., that applies to the installation of manufactured homes;
- (tt) Violates any provision of part 9 of this article;
- (uu) Violates section 38-40-105, C.R.S.
- (vv) Violates section 12-55-110.3, C.R.S.
- (ww) Violates any provision of section 6-1-702.
- (2) Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.
- (3) The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.
- (xx) Violates any provision of part 11 of this article.

(yy) Violates any provision of part 3 of article 5.5 of title 12, C.R.S.

(zz) Violates any provision of section 6-1-717.

(aaa) Violates any provision of section 12-61-904.5, C.R.S.;

(bbb) Violates any provision of section 12-61-911, C.R.S.

(ccc) Violates the provisions of section 6-1-722.

**6-1-105.5. Hearing aid dealers -- deceptive trade practices. (Repealed)**

**6-1-106. Exclusions.** (1) This article does not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters, or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(c) Actions or appeals pending on or before July 1, 1969.

(2) This article shall not be interpreted to apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name, or other trade identification which was used and not abandoned prior to July 1, 1969, if the use was in good faith and is otherwise lawful except for the provisions of this article.

**6-1-107. Powers of attorney general and district attorneys.** (1) When the attorney general or a district attorney has cause to believe that any person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may:

(a) Request such person to file a statement or report in writing under oath or otherwise, on forms prescribed by him, as to all facts and circumstances concerning the sale or advertisement of property by such person and any other data and information he deems necessary;

(b) Examine under oath any person in connection with the sale or advertisement of any property;

(c) Examine any property or sample thereof, record, book, document, account, or paper he deems necessary;

(d) Make true copies, at the expense of the attorney general or district attorney, of any record, book, document, account, or paper examined pursuant to paragraph (c) of this subsection (1), which copies may be offered into evidence in lieu of the originals thereof in actions brought pursuant to sections 6-1-109 and 6-1-110; and

(e) Pursuant to any order of any district court, impound any sample of property which is material to such deceptive trade practice and retain the same in his possession until completion of all proceedings undertaken under this article. An order shall not be issued pursuant to this paragraph (e) without full opportunity given to the accused to be heard and unless the attorney general or district attorney has proven by clear and convincing evidence

that the business activities of the person to whom an order is directed will not be impaired thereby.

(2) Nothing in subsection (1) of this section shall be construed to allow a district attorney to enforce the provisions of this article beyond the territorial limits of his judicial district, unless the alleged deceptive trade practice or any portion of a transaction involving an alleged deceptive trade practice occurred in said district attorney's judicial district, or unless the principal place of business of any defendant is located in said district attorney's district, or unless any defendant resides in said district attorney's judicial district.

**6-1-108. Subpoenas -- hearings -- rules.** (1) The attorney general or a district attorney, in addition to other powers conferred upon him by this article, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and promulgate such rules as may be necessary to administer the provisions of this article.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or the Colorado rules of civil procedure.

**6-1-109. Remedies.** (1) If any person fails to cooperate with any investigation pursuant to section 6-1-107 or fails to obey any subpoena pursuant to section 6-1-108, the attorney general or a district attorney may apply to the appropriate district court for an appropriate order to effect the purposes of this article. The application shall state that there are reasonable grounds to believe that the order applied for is necessary to terminate or prevent a deceptive trade practice as defined in this article. If the court is satisfied that reasonable grounds exist, the court in its order may:

- (a) Grant injunctive relief restraining the sale or advertisement of any property by such person;
- (b) Require the attendance of or the production of documents by such person, or both;
- (c) Grant such other or further relief as may be necessary to obtain compliance by such person.

**6-1-110. Restraining orders -- injunctions -- assurances of discontinuance.** (1)

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

(2) Where the attorney general or a district attorney has authority to institute a civil action or other proceeding pursuant to the provisions of this article, the attorney general or district attorney may accept, in lieu thereof or as a part thereof, an assurance of discontinuance of any deceptive trade practice listed in section 6-1-105 or part 7 of this article. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation and any action or proceeding by the attorney general or a district attorney and any amount necessary to restore to any person any money or property that may have been acquired by such alleged violator by means of any such deceptive trade practice. Any such assurance of discontinuance accepted by the attorney general or a district attorney and any such stipulation filed with the court as a part of any such action or proceeding shall be a matter of public record unless the attorney general or the district attorney determines, at his or her discretion, that it will be confidential to the parties to the action or proceeding and to the court and its employees. Upon the filing of a civil action by the attorney general or a district attorney alleging that a confidential assurance of discontinuance or stipulation accepted pursuant to this subsection (2) has been violated, said assurance of discontinuance or stipulation shall thereupon be deemed a public record and open to inspection by any person. Proof by a preponderance of the evidence of a violation of any such assurance or stipulation shall constitute prima facie evidence of a deceptive trade practice for the purposes of any civil action or proceeding brought thereafter by the attorney general or a district attorney, whether a new action or a subsequent motion or petition in any pending action or proceeding.

(3) When the attorney general or a district attorney shows by a preponderance of evidence that a mortgage broker, ~~or~~ mortgage originator, mortgage lender, mortgage loan applicant, real estate broker, real estate agent, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, has continued to participate in the origination of mortgage loans in violation of section 38-40-105, C.R.S., after having been previously enjoined from practices in violation of such section, the attorney general or district attorney may, in addition to any other remedies, apply for and obtain, in the court that has previously issued an injunction, a further injunction against continuing to participate in the business of originating mortgage loans for up to five years.

(4) In addition to any other remedy available under this section, when the attorney general or district attorney has cause to believe that a person has engaged in or is engaging in a deceptive trade practice described in section 6-1-720, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, an order forfeiting any tickets obtained, or the proceeds from the resale of any such tickets, in violation of section 6-1-720.

**6-1-111. Information and evidence confidential and inadmissible -- when.** (1) Any testimony obtained by the attorney general or a district attorney pursuant to compulsory process under this article or any information derived directly or indirectly from such testimony shall not be admissible in evidence in any criminal prosecution against the person so compelled to testify. The provisions of this subsection (1) shall not be construed to

prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) Subject to the provisions of section 6-1-110 (2), the records of investigations or intelligence information of the attorney general or a district attorney obtained under this article may be deemed public records available for inspection by the general public at the discretion of the attorney general or the district attorney. This subsection (2) shall not be construed to prevent the attorney general or a district attorney from issuing public statements describing or warning of any course of conduct or any conspiracy which constitutes a deceptive trade practice, whether on a local, statewide, regional, or nationwide basis.

**6-1-112. Civil penalties.** (1) The attorney general or a district attorney may bring a civil action on behalf of the state to seek the imposition of civil penalties as follows:

(a) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

(b) Any person who violates or causes another to violate any court order or injunction issued pursuant to this article shall forfeit and pay to the general fund of this state a civil penalty of not more than ten thousand dollars for each such violation. For the purposes of this section, the court issuing the order or injunction shall retain jurisdiction, and the cause shall be continued. Upon violation, the attorney general or a district attorney may petition the court for the recovery of the civil penalty. Such civil penalty shall be in addition to any other penalty or remedy available for the enforcement of the provisions of this article and any court order or injunction.

(c) Any person who violates or causes another to violate any provision of this article, where such violation was committed against an elderly person, shall forfeit and pay to the general fund of the state a civil penalty of not more than ten thousand dollars for each such violation. For purposes of this paragraph (c), a violation of any provision of this article shall constitute a separate violation with respect to each elderly person involved.

**6-1-113. Damages.** (1) The provisions of this article shall be available in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in this article. An action under this section shall be available to any person who:

(a) Is an actual or potential consumer of the defendant's goods, services, or property and is injured as a result of such deceptive trade practice, or is a residential subscriber, as defined in section 6-1-903 (9), who receives unlawful telephone solicitation, as defined in section 6-1-903 (10); or

(b) Is any successor in interest to an actual consumer who purchased the defendant's goods, services, or property; or

(c) In the course of the person's business or occupation, is injured as a result of such deceptive trade practice.

(2) Except in a class action or a case brought for a violation of section 6-1-709, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article shall be liable in an amount equal to the sum of:

(a) The greater of:

(I) The amount of actual damages sustained; or

(II) Five hundred dollars; or

(III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus

(b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2.3) As used in subsection (2) of this section, "bad faith conduct" means fraudulent, willful, knowing, or intentional conduct that causes injury.

(2.5) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-709, in addition to interest, costs of the action, and reasonable attorney fees as determined by the court, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for a manufactured home not delivered in accordance with the provisions of section 6-1-709.

(2.7) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-105 (1) (ss), the court may award reasonable costs of the action and attorney fees and interest, and in addition, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for the installation of a manufactured home not installed in accordance with the provisions of part 33 of article 32 of title 24, C.R.S., that apply to the installation of manufactured homes.

(3) Any person who brings an action under this article that is found by the court to be groundless and in bad faith or for the purpose of harassment shall be liable to the defendant for the costs of the action together with reasonable attorney fees as determined by the court.

(4) Costs and attorney fees shall be awarded to the attorney general or a district attorney in all actions where the attorney general or the district attorney successfully enforces this article.

**6-1-114. Criminal penalties.** Upon a first conviction any person who promotes a pyramid promotional scheme in this state or who violates any provision of part 3 of article 5.5 of title 12, C.R.S. or 6-1-717 is guilty of a class 1 misdemeanor, as defined in section 18-1.3-501, C.R.S., and upon a second or subsequent conviction of part 3 of article 5.5 of title 12, C.R.S. is guilty of a class 6 felony, as defined in section 18-1.3-401, C.R.S.

**6-1-115. Limitations.** All actions brought under this article must be commenced within three years after the date on which the false, misleading, or deceptive act or practice occurred or the date on which the last in a series of such acts or practices occurred or within three years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of

limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

## **PART 2**

### **AUTO RENTAL CONTRACTS -- COLLISION DAMAGE WAIVERS**

**6-1-201. Definitions.** As used in this part 2, unless the context otherwise requires:

- (1) "Collision damage waiver" means any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.
- (2) "Lessee" means any person or organization obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.
- (3) "Lessor" means any person or organization in the business of providing rental motor vehicles to the public.
- (4) "Private passenger type automobile or vehicle" means a motor vehicle of the private passenger or station wagon type, including passenger vans and minivans that are primarily for the transport of persons.
- (5) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a rental motor vehicle by a lessee for a period of less than one hundred eighty days.
- (6) "Rental motor vehicle" means a private passenger type automobile or vehicle which, upon execution of a rental agreement, is made available to a lessee for its use.

**6-1-202. Prohibited act.** No lessor engaged in renting motor vehicles may sell to any lessee renting a motor vehicle in this state a collision damage waiver as part of the rental contract unless the lessor first gives the lessee written disclosure, as provided in section 6-1-203 of the terms and provisions of such waiver.

**6-1-203. Collision damage waiver form -- requirements -- failure to comply.** (1) Any collision damage waiver form shall conform to the following requirements:

- (a) It shall be understandable and written in simple and readable plain language;
- (b) The terms of such collision damage waiver, including, but not limited to, any conditions or exclusions applicable to the collision damage waiver, shall be prominently displayed;
- (c) All restrictions, conditions, or provisions in, or endorsed on, the collision damage waiver shall be printed in type at least as large as brevier or ten-point type;
- (d) The collision damage waiver shall include a statement of the total charge for the anticipated rental period or the anticipated total daily charge; and
- (e) The agreement containing the collision damage waiver shall display the following notice on the face of the agreement, set apart and in bold-faced type, and in type at least as large as ten-point type:



**"NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. YOU ARE ADVISED NOT TO SIGN THIS WAIVER IF YOU HAVE RENTAL VEHICLE COLLISION COVERAGE PROVIDED BY CERTAIN GOLD OR PLATINUM CREDIT CARDS OR COLLISION INSURANCE ON YOUR OWN VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED."**

(2) The failure by a lessor to comply with any provision of this section is a deceptive trade practice under the provisions of this article.

**6-1-204. Prohibited exclusion.** (1) No collision damage waiver subject to this part 2 shall contain an exclusion from the waiver for damages caused by the ordinary negligence of the lessee. Any such exclusion in violation of this section will be void and is a deceptive trade practice under this article. This section shall not be deemed to prohibit an exclusion from the waiver for damages caused by the lessee by:

- (a) Willful and wanton conduct or misconduct;
- (b) Intoxication by alcohol or use of controlled substances as defined in section 42-4-1301, C.R.S.;
- (c) Participation in a speed contest;
- (d) Carrying persons or property for hire, or pushing or towing anything;
- (e) Use of the vehicle while committing a misdemeanor or felony or other criminal act;
- (f) Use of the vehicle by an unauthorized driver, which includes any person not specifically authorized by the rental agreement;
- (g) Supplying information which is false concerning the rental transaction with intent to defraud the lessor;
- (h) Use of the vehicle outside the continental United States, unless specifically authorized by the rental agreement; and
- (i) Any instance whereby, during the rental of such rental motor vehicle, the speedometer or odometer is tampered with or disconnected.

**6-1-205. Information to be disclosed in advertisements for rental agreements for rental motor vehicles.** In any advertisement to the public for a rental agreement for a rental motor vehicle that includes a rental rate, the lessor shall prominently disclose on the face of any such advertisement the daily charge of any collision damage waiver offered, a statement informing a prospective lessee that he or she should review his or her own automobile insurance coverage to determine if such coverage applies to the use of a rental motor vehicle, and a statement that a prospective lessee may also wish to determine whether his or her credit

card or travel and entertainment card provides collision damage coverage for use of a rental motor vehicle or other such privilege of membership.

### **PART 3**

#### **PREVENTION OF TELEMARKETING FRAUD**

**6-1-301. Legislative Declaration.** The general assembly hereby finds, determines, and declares that the use of telephones for commercial solicitation is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the general assembly finds that the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers, and, particularly, elderly, homebound, and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

**6-1-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation, or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include the following:

(a) A person offering or selling a security as defined in section 11-51-201(17), C.R.S., if:

(I) The security is either registered with the securities commissioner under section 11-51-303 or 11-51-304, C.R.S., exempt from registration under section 11-51-307, C.R.S., or the transaction in the security is exempt under section 11-51-308, C.R.S.; and

(II) The person is licensed by the securities commissioner as a broker-dealer as defined in section 11-51-201 (2), C.R.S., unless expressly excluded from such definition, or as a sales representative as defined in section 11-51-201 (14), C.R.S., unless expressly excluded from such definition, or such person is exempted from licensing under section 11-51-402, C.R.S.;

(b) (I) A person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues; or

(II) A person soliciting the sale of any book, record, audio tape, compact disc, or video if the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 C.F.R. 425;

(c) A person making telephone calls to a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;

(d) A paid solicitor or charitable organization that is required to and has complied with the registration, notice, and filing requirements of sections 6-16-104.6 and 6-16-104,

respectively, or a person who is excluded from such notice and reporting requirements by section 6-16-103(7);

(e) A supervised financial organization, as defined in section 5-1-301(45), C.R.S., and its employees, when acting within the scope of their employment;

(f) A supervised lender, as defined in section 5-1-301(46), C.R.S., and its employees, when acting within the scope of their employment;

(g) A person selling insurance, as defined in section 10-1-102(12), C.R.S., in compliance with the requirements of title 10, C.R.S.;

(h) A person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had a previous face-to-face meeting in the course of such person's business;

(i) Any governmental entity or employee thereof, acting in the employee's official capacity;

(j) A person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser;

(k) A person or an affiliate of a person whose business is regulated by the public utilities commission;

(l) A person or an affiliate of a person whose business is regulated by the real estate commission;

(m) A person whose conduct is within the exclusive jurisdiction of the federal commodity futures trading commission as granted under the federal "Commodity Exchange Act", as amended;

(n) A seller of food for immediate consumption when the sale to one purchaser does not exceed three hundred dollars;

(o) A person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days after receipt of the returned merchandise;

(p) An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) (2) of that section;

(q) A person who has been operating for at least three years a retail business establishment in Colorado under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location;

(r) A person who has conducted business for at least three years under the same name and in the same state and offers potential purchasers satisfaction guaranteed by the sending of the

product or providing the service and the purchaser has an unqualified right to review and return or cancel for at least thirty days;

(s) Any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five years under the same business name and seventy-five percent or more of its services are performed on behalf of sellers exempt from this section. Nothing in this paragraph (s) shall be construed to exempt any seller that contracts with a telephone marketing service company for telemarketing sales services from the requirements set forth in section 6-1-303 or from the prohibitions set forth in section 6-1-304.

(t) A person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling.

(2) "Commercial telephone solicitation" means:

(a) Unsolicited telephone calls to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device, for the purpose of inducing the person to purchase or invest in goods, services, or property or offering an extension of credit; or

(b) Any other communication by a commercial telephone seller in which:

(I) A gift, award, or prize is offered and a telephone call response from the intended purchaser is invited; or

(II) A loan, credit card, or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited; or

(III) A sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response; or

(c) Any other communication by a commercial telephone seller which includes representations about the price, quality, or availability of goods, services, or property and which invites a response by telephone, including pay-per-call service calls, or which is followed by a telephone call to the intended purchaser by a salesperson.

(3) "Pay-per-call" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number.

(4) "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(5) "Purchaser" means a person who receives or responds to a commercial telephone solicitation.

(6) "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made.

(7) "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property, or an extension of credit by a commercial telephone seller and includes all communications which precede such payment of money.

**6-1-303. Registration of commercial telephone sellers.** (1) No commercial telephone seller shall conduct business in this state without having registered with the attorney general at least ten days prior to the conduct of such business. Individual employees of the commercial telephone seller are not required to register. A commercial telephone seller conducts business in this state if the telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

(2) A registration shall be effective for one year after the date of filing with the attorney general. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the attorney general, but such filing fee shall not exceed two hundred fifty dollars for an application for registration or one hundred dollars for an application for renewal.

(3) Whenever, prior to expiration of a commercial telephone seller's annual registration, there is a material change in the information required by subsection (5) of this section, the seller shall, within ten days, file an addendum updating the information with the attorney general.

(4) Each application for registration shall be in writing and shall contain such information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as is required by law. The application shall be submitted on a form provided by the attorney general and shall be verified by a declaration signed by each principal of the commercial telephone seller under penalty of perjury. The declaration shall specify the date and location of signing. The information submitted pursuant to this section shall be available for public inspection.

(5) Each application for registration or renewal pursuant to this section shall contain the following information:

(a) The name or names of the commercial telephone seller, including all names under which the commercial telephone seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization;

(b) The seller's business form and the date and place of organization;

(c) The complete street addresses of all locations from which the commercial telephone seller is or will be conducting business, including a designation of the seller's principal business location;

(d) A listing of all telephone numbers, including pay-per-call numbers, to be used by the commercial telephone seller;

(e) The name, residential address, and position held by each principal of the commercial telephone seller and the names, residential addresses, and positions of those persons who have management responsibilities in connection with the commercial telephone seller's business activities;

(f) A description of the goods, services, property, or extension of credit the commercial telephone seller is offering for sale and a copy of all sales scripts the commercial telephone seller requires salespersons to use when soliciting prospective purchasers, or, if no sales script is required to be used, a description of the sales presentation;

(g) All rules, regulations, terms, restrictions, and conditions to receiving any prize, bonus, award, gift, or premium, if applicable, including a description of each prize, bonus, award,

gift, or premium, and the actual or approximate odds of a purchaser's receiving such prize, bonus, award, gift, or premium;

(h) A copy or representative sample of all written materials the seller sends to any purchaser;

(i) Such additional information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as may reasonably be required by the attorney general.

**6-1-304. Unlawful telemarketing practices.** (1) A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

(a) Conducts business as a commercial telephone seller without having registered with the attorney general, as required by section 6-1-303;

(b) Fails to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services, or property at any time before the expiration of three business days after the purchaser's receipt of such goods, services, or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked.

(c) Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty days after the commercial telephone seller receives notice of cancellation from the purchaser; except that:

(I) If the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty days after the commercial telephone seller's receipt of the returned goods or property;

(II) If the purchaser has received services, including those received during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the commercial telephone seller is not required to refund payments to the purchaser;

(d) Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph (b) of this subsection (1);

(e) Misrepresents to any person that the person has won a contest, sweepstakes, or drawing, or that the person will receive free goods, services, or property;

(f) Represents that the seller's goods, services, or property are "free" if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services, or property;

(g) Makes any reference to the commercial telephone seller's compliance with this article to any purchaser without also disclosing that compliance with this article does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods, or services;

(h) Engages in any deceptive trade practice defined in section 6-1-105 or part 7 of this article.

(2) Paragraphs (b) and (d) of subsection (1) of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a

cancellation of services by giving notice to the seller within seven days after receipt by the consumer and the seller processes the refund or cancellation within thirty days after receipt of the returned merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words "satisfaction guaranteed", "free inspection", or "no-risk guarantee" satisfy the disclosure requirements of this subsection (2).

(3) The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

(4) (a) On or after September 1, 2005, a person commits an unlawful telemarketing practice if the person knowingly:

(I) Lists a cellular telephone number in a directory for a commercial purpose unless the person whose number has been listed has given affirmative consent, through written, oral, or electronic means, to such listing; or

(II) Uses a scanning device or other electronic means to identify a cellular telephone number and to make a commercial telephone solicitation to a cellular telephone.

(b) This subsection (4) shall not apply to a commercial telephone solicitation that is in relation to a preexisting commercial relationship between the person and the person who owns the cellular telephone.

**6-1-305. Penalties.** (1) In addition to the remedies available under sections 6-1-110, 6-1-112, and 6-1-113:

(a) Any person who, after receiving written notice of noncompliance from the attorney general or a district attorney, conducts business as a commercial telephone seller without having registered with the attorney general as required by section 6-1-303 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(b) Any commercial telephone seller who knowingly engages in any unlawful telemarketing practice as defined in section 6-1-304(1) (b) to (1) (h) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(c) A person who engages in any unlawful telemarketing practice as defined in section 6-1-304(4) shall be liable in a private civil action to the owner of the cellular telephone for consequential damages, court costs, attorney fees, and a penalty in the amount of at least three hundred dollars and not more than five hundred dollars for a first offense and at least five hundred dollars and not more than one thousand dollars for a second or subsequent offense.

**6-1-306. Repeal. (Repealed)**

## **PART 4**

### **WARRANTIES FOR ASSISTIVE TECHNOLOGY ACT**

**6-1-401. Legislative intent.** (1) It is the intent of the general assembly to encourage and promote independent living and self-sufficiency for persons with disabilities and to reduce their need to rely on publicly funded supports. Of an estimated forty-nine million Americans with disabilities, approximately seventy percent of them are unemployed or underemployed. Having safe, reliable assistive technology represents a most essential need given the many barriers to independent living and self-sufficiency people with disabilities face.

(2) The goal of meeting this essential need can be furthered by assuring that assistive technology provided to persons with disabilities is of quality and is covered by adequate warranties to maintain their assistive technology in proper working condition, to assure availability of appropriate loaner replacement assistive technology while their own is being repaired, and to encourage manufacturers and dealers to cooperatively pool assistive technology resources for loaner purposes to assure availability without an undue burden.

(3) The general assembly finds and declares it is in the state's best interest to adopt this part 4.

**6-1-402. Definitions.** As used in this part 4, unless the context otherwise requires:

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a wheelchair, including the cost of an alternative wheelchair, if a loaner, as that term is defined in subsection (8) of this section, was not offered to the consumer, or other assistive device or service for mobility assistance. "Collateral costs" shall not include the cost of hiring a personal assistant.

(2) "Consumer" means:

(a) A purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a wheelchair is transferred for purposes other than resale, if such transfer occurs before the expiration of the express warranty applicable to such wheelchair;

(c) A person who may enforce the express warranty applicable to a wheelchair; or

(d) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Dealer" means a person or entity that is in the business of selling wheelchairs or any agents of that person or entity. "Dealer" includes an alternative warranty service provider.

(4) (a) "Early termination cost" means any expense or obligation that a wheelchair lessor incurs as a result of:

(I) Terminating a written lease before the termination date set forth in the lease; and

(II) Returning the wheelchair to the manufacturer.

(b) "Early termination cost" includes any prepayment penalty under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a wheelchair lessor avoids as a result of performing the acts described in paragraph (a) of subsection (4) of this section. "Early termination savings" includes any interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor did not finance the wheelchair, the difference between the total amount the lessee was obligated to pay over the



period of the lease term remaining after the early termination date and the present value of that amount on the early termination date.

(6) "Express warranty" means an express warranty as set forth in sections 4-2-313 and 4-2.5-210, C.R.S. An express warranty shall cover every part of a new wheelchair except the tires and batteries.

(7) "Lessor" means a person or entity that leases a wheelchair to a consumer or that holds the lessor's rights under a written lease or any agents of that person or entity.

(8) "Loaner" means a wheelchair that is provided to the consumer for use free of charge that is not required to have the functional capabilities equal to or greater than those of the original wheelchair but that meets the following conditions:

(a) It is in good working order;

(b) It performs at a minimum the most essential functions of the original wheelchair in light of the disabilities of the user;

(c) It is usable by the consumer given the consumer's impairments; and

(d) Any difference between the loaner and the original wheelchair does not create a threat to safety.

(9) "Manufacturer" means a person or entity that manufactures or assembles wheelchairs and any agents of that person or entity, including an importer, a distributor, an authorized servicer, a factory branch, a distributor branch, and warrantors of the manufacturer's wheelchairs. "Manufacturer" does not include a dealer.

(10) "Modular assembly" means a device added to the wheelchair base to accommodate the special needs of the consumer, such as seating systems, tilt or recline systems, and specially adapted control modules.

(11) "Nonconformity" means a defect that substantially impairs the use, reliability, value, or safety of a wheelchair and that is covered by an express warranty applicable to such wheelchair or a component of such wheelchair. "Nonconformity" does not include a defect that is the result of abuse, neglect, or the unauthorized modification or alteration of a wheelchair by a consumer.

(12) "Reasonable attempt to repair" means that one of the following has occurred within the term of an express warranty applicable to a new wheelchair or within one year after first delivery of a wheelchair to a consumer, whichever occurs earlier:

(a) The same nonconformity is subject to repair at least three times by the manufacturer, lessor, or any of the manufacturer's authorized dealers; or

(b) Because of a nonconformity, the wheelchair cannot be used by the consumer for an aggregate of at least thirty days or ten consecutive business days.

(13) "Replacement wheelchair" means a wheelchair of comparable quality, size, and function.

(14) "Selling dealer" means the entity that originally sold the wheelchair to the consumer and was involved in the design, assembly, fitting, and education of the consumer on the use and maintenance of the wheelchair.

(15) "Specialty control module" means the technologically advanced electronic device of limited availability that contains the signal and output circuitry for a power wheelchair

designed and assembled for use by a specific individual with severe limitations who is unable to use a standard control module.

(16) "Standard wheelchair" means a wheelchair that has seat width and depth dimensions of sixteen to eighteen inches.

(17) "Wheelchair" means any wheelchair, scooter, or modular assembly, including a demonstrator, that is motor driven or manually operated that a consumer purchases or accepts transfer of in this state for the purposes of mobility assistance.

**6-1-403. Express warranty required -- authorized servicers.** (1) (a) Except as provided in subsection (2) of this section, a consumer who purchases or leases a new wheelchair either directly or indirectly through a dealer or lessor shall receive an express warranty for such wheelchair. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

(b) Except as provided in subsection (2) of this section, a selling dealer shall provide an express warranty for any modifications made by the dealer that shall also extend for not less than six months after first delivery to the consumer.

(2) Notwithstanding the provisions of subsection (1) of this section, the warranty for the specialty control module shall be limited to the warranty provided by the manufacturer of such specialty control module or ninety days, whichever is longer.

(3) If a manufacturer or dealer fails to furnish the express warranty required by this section, the wheelchair shall be covered by a warranty the same as if an express warranty had been provided by the manufacturer or dealer pursuant to this section.

(4) Any entity that sells or leases wheelchairs in this state, including any entity that sells or leases through mail order or catalogue sales, shall designate an authorized servicer for such chairs that is located in this state in reasonable proximity to the consumer.

(5) (a) In the event that the selling dealer from whom the consumer purchased the wheelchair goes out of business or ceases to be an authorized dealer or service center for the manufacturer, or if the dealer or consumer moves or relocates to a location that makes it unreasonable for the consumer to seek warranty service from the selling dealer, or if the consumer is dissatisfied with the selling dealer, the consumer shall be responsible for contacting the manufacturer or another authorized dealer which will be responsible for facilitating the warranty service required with an authorized dealer, to be mutually agreed upon by the consumer and the manufacturer, which entity shall be referred to as the alternative warranty service provider.

(b) In the event that an alternative warranty service provider is designated pursuant to paragraph (a) of this subsection (5), the consumer may only seek warranty service from such alternative warranty service provider.

(c) To the extent reasonable and possible, the manufacturer shall take into account the independent mobility resources of the consumer when determining the alternative warranty service provider pursuant to the provisions of this subsection (5).

**6-1-404. Remedies.** (1) If a new wheelchair does not conform to the applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, the

selling dealer, or the alternative warranty service provider, and makes the wheelchair available for repair within the warranty period, the nonconformity shall be repaired at no charge to the consumer. Any repairs performed pursuant to the provisions of this section shall be warranted for a period not less than the original warranty period. When the wheelchair is not safely moveable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair, or the wheelchair may be repaired on site at the option of the dealer.

(2) If the manufacturer authorizes the dealer or lessor to make the repair, the dealer or lessor shall make the repair and then be reimbursed by the manufacturer for the dealer's or lessor's cost for parts, labor, and repair if the nonconformity is a manufacturer's defect. A manufacturer shall respond to the dealer's or lessor's request for authorization to make a repair by the end of the business day that immediately follows the day such a request is made.

(3) When a wheelchair covered by an express warranty is tendered by a consumer to the manufacturer, selling dealer, alternative warranty service provider, or lessor for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, the consumer shall receive a loaner if the out-of-service period exceeds one day and shall keep the loaner until the requirements of section 6-1-405 or 6-1-406 are fulfilled. If the required loaner is not a standard wheelchair, the manufacturer or dealer shall make a good faith effort to make available alternative equipment that is usable by the consumer. The cost of the loaner shall be borne by the entity responsible for the defect requiring the repair or replacement of the wheelchair as provided in this section. The consumer shall have the duty to care for the loaner properly and to protect against any damage to the chair.

(4) If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the wheelchair, as required by this section, shall:

(a) If the wheelchair was purchased, take the following action at the direction of the consumer:

(I) Accept a return of the wheelchair, provide a replacement wheelchair of equal or greater value, and refund any collateral costs to the consumer, a holder of a perfected security interest in the wheelchair, or a third-party purchaser; or

(II) Accept a return of the wheelchair and refund to the consumer, holder of a perfected security interest in the wheelchair, or third-party purchaser not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid;

(b) If the wheelchair was leased, take all of the following actions at the direction of the consumer:

(I) Accept a return of the wheelchair;

(II) (A) Refund to the lessor and any holder of a perfected security interest in the wheelchair the current value of the written lease.

(B) For purposes of this subparagraph (II), "current value of the written lease" means the sum of the total amount for which the consumer is obligated during the term of the lease remaining after the early termination date, the dealer's early termination costs, and the value

of the wheelchair on the lease expiration date, if the lease sets forth that value, less the lessor's early termination savings.

(III) Refund to the consumer or third-party purchaser the amount paid under the lease plus any collateral costs.

(5) (a) In the event that a dispute arises as to liability under this part 4 between or among a manufacturer, dealer, lessor, or consumer, and the consumer is covered by any third-party insurer, such third-party insurer shall not be relieved of any obligation to provide benefits covered under its plan or applicable law.

(b) In the event that a wheelchair is found to be defective, the third-party payor described in paragraph (a) of this subsection (5) shall have all rights of recovery, including the right to costs, that the consumer would have had under this part 4.

**6-1-405. Remedies for consumers -- conditions.** (1) To receive a refund or a replacement wheelchair, the consumer of a purchased wheelchair shall first offer to transfer the wheelchair with the nonconformity to the manufacturer, selling dealer, or alternative warranty service provider.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the manufacturer or dealer shall provide the consumer with a refund or a replacement wheelchair.

(3) When a manufacturer or dealer provides a consumer with a refund or a replacement wheelchair, such consumer shall return the wheelchair with the nonconformity, if such wheelchair is safely operable, to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer. When the wheelchair is not safely movable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair.

**6-1-406. Remedies for consumers of leased wheelchairs -- conditions.** (1) To receive a refund due on a leased wheelchair, a consumer shall first offer to return the wheelchair with the nonconformity to the lessor.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the lessor shall provide the consumer with a refund.

(3) When a lessor provides a consumer with a refund, such consumer shall return the wheelchair with the nonconformity to such lessor.

(4) A lessor shall offer to transfer to a manufacturer or dealer the possession of a wheelchair returned pursuant to subsection (3) of this section. Within thirty business days after receiving such offer, the manufacturer or dealer shall remit the refund amount to the lessor. When the manufacturer or dealer makes such refund, the lessor shall provide the manufacturer or dealer with the endorsements necessary to transfer possession to the manufacturer or dealer.

**6-1-407. Resale of a returned wheelchair -- disclosure required.** A wheelchair returned pursuant to this part 4 by a consumer in this state, or by a consumer in another state under a

similar law of that state, shall not be sold or leased again in this state unless full disclosure is made to the prospective consumer of the reasons for the return.

**6-1-408. Other remedies -- waiver of rights void.** (1) This part 4 shall not limit the rights or remedies available to a consumer under any other law of this state.

(2) If a consumer waives the rights granted to consumers pursuant to this part 4, such waiver shall be void as against public policy.

(3) Notwithstanding the remedies that are available to a consumer pursuant to this part 4, a consumer may pursue any other remedy, including an action to recover for damages caused by a violation of this part 4. If a manufacturer or dealer is found to have violated this part 4, a consumer shall be awarded the amount of actual damages caused by the violation and reasonable attorney fees. The consumer may be awarded collateral costs and punitive damages.

**6-1-409. Fraudulent acts.** Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 4 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401(2), C.R.S., and which crime shall be punished as provided in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

**6-1-410. Arbitration.** Disputes among manufacturers, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this part 4 shall be subject to arbitration pursuant to the Colorado rules of civil procedure. The award of the arbitration panel shall be binding upon the parties and shall only be subject to court review by trial de novo.

**6-1-411. Defect notification.** (1) A manufacturer shall be responsible for providing written notification to an owner, user, purchaser, dealer, lessor, or consumer of any known or discovered inherent defect in a wheelchair that affects the safety, usability, or reliability of that wheelchair. The manufacturer shall send such notification by first class mail to the last known address of the owner, user, purchaser, dealer, lessor, or consumer within fourteen days after learning of such a defect.

(2) A manufacturer shall be responsible for the costs of providing the notification required in subsection (1) of this section and for all costs associated with correcting any defect described in subsection (1) of this section.

(3) The provisions of this section shall apply without time limitations.

**6-1-412. Disclosures.** (1) Prior to the sale of any wheelchair, the seller shall disclose whether the wheelchair is new or used and whether any warranty applies to such wheelchair.

(2) Upon delivery of a new or used wheelchair, the seller shall advise the buyer of any warranty rights under this part 4 and the wheelchair's maintenance schedule and operating instructions and shall provide the buyer with a copy of the owner's manual.

(3) The disclosure required pursuant to subsection (1) of this section and the advisement required pursuant to subsection (2) of this section shall be in writing and shall, in the case of buyer who is a person adjudicated not mentally competent, be provided to the guardian, parent, legal custodian, or primary caregiver of such person.

## **PART 5**

### **WARRANTIES FOR FACILITATIVE TECHNOLOGY ACT**

**6-1-501. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a facilitative device, including the cost of an alternative facilitative device or other facilitative device or service.

(2) "Consumer" means:

(a) A purchaser of a facilitative device, if the facilitative device was purchased from a dealer or manufacturer for purposes other than resale;

(b) A person to whom a facilitative device is transferred for purposes other than resale, if such transfer occurs before the expiration of the express warranty applicable to such facilitative device;

(c) A person who may enforce the express warranty applicable to a facilitative device; or

(d) A person who leases a facilitative device from a lessor under a written lease.

(3) "Dealer" means a person or entity that is in the business of selling facilitative devices, or any agents of that person or entity. "Dealer" includes an alternative warranty service provider.

(4) (a) "Early termination cost" means any expense or obligation that a lessor of facilitative devices incurs as a result of:

(I) Terminating a written lease before the termination date set forth in the lease; and

(II) Returning the facilitative device to the manufacturer.

(b) "Early termination cost" includes any prepayment penalty under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a lessor of facilitative devices avoids as a result of performing the acts described in paragraph (a) of subsection (4) of this section. "Early termination savings" includes any interest charge that the lessor of facilitative devices would have paid to finance the facilitative device or, if the lessor did not finance the facilitative device, the difference between the total amount the lessee was obligated to pay over the period of the lease term remaining after the early termination date and the present value of that amount on the early termination date.

(6) "Express warranty" means an express warranty as set forth in sections 4-2-313 and 4-2.5-210, C.R.S. An express warranty shall cover every part of a new facilitative device.

(7) "Facilitative device" means a device that has a retail price equal to or greater than one hundred dollars and that is exclusively designed and manufactured to assist a person with a disability with such person's specific disability, through the use of facilitative technology, to

be self-sufficient or to maintain or improve that person's quality of life. "Facilitative device" does not include wheelchairs as that term is defined in section 6-1-402(17). "Facilitative device" does include the following:

(a) Telephone communication devices for the hearing impaired and other facilitative listening devices except for hearing aids as defined in section 12-5.5-301 (4), C.R.S., and cochlear implants as defined in section 12-5.5-301 (2), C.R.S.;

(b) Computer equipment and reading devices with voice input or output, optical scanners, talking software, braille printers, and other aids and devices that provide access to text by a person with a disability;

(c) Computer equipment with voice output, artificial larynges, voice amplification devices, and other alternative and augmentative communication devices;

(d) Voice recognition computer equipment, software and hardware accommodations, and other forms of alternative access to computers for persons with disabilities; and

(e) Any other device, other than a wheelchair, that enables a person with a disability to communicate, see, hear, or maneuver.

(8) "Facilitative technology" means technology used to develop technological devices to be used exclusively for the purpose of assisting a person with a disability with respect to such person's specific disability by facilitating or enhancing that person's ability to be self-sufficient.

(9) "Lessor" means a person or entity that leases a facilitative device to a consumer or that holds the lessor's rights under a written lease, or any agents of that person or entity.

(10) "Manufacturer" means a person or entity that manufactures or assembles facilitative devices and any agents of that person or entity, including an importer, a distributor, an authorized servicer, a factory branch, a distributor branch, and warrantors of the manufacturer's facilitative devices. "Manufacturer" does not include a dealer.

(11) "Nonconformity" means a defect that substantially impairs the use, reliability, value, or safety of a facilitative device and that is covered by an express warranty applicable to such facilitative device or a component of such facilitative device. "Nonconformity" does not include a defect that is the result of abuse, neglect, or the unauthorized modification or alteration of a facilitative device by a consumer.

(12) "Person with a disability" means a person who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rule or regulation.

(13) "Reasonable attempt to repair" means that one of the following has occurred within the term of an express warranty applicable to a new facilitative device or within one year after first delivery of a facilitative device to a consumer, whichever occurs earlier:

(a) The same nonconformity is subject to repair at least three times by the manufacturer, the lessor, or any of the manufacturer's authorized dealers; or

(b) Because of a nonconformity, the facilitative device cannot be used by the consumer for an aggregate of at least thirty days.

(14) "Replacement facilitative device" means a facilitative device of comparable quality, size, and function.

(15) "Selling dealer" means the entity that originally sold the facilitative device to the consumer and was involved in the design, assembly, fitting, and education of the consumer on the use and maintenance of the facilitative device.

**6-1-502. Express warranty required -- authorized servicers.** (1) A consumer who purchases or leases a new facilitative device either directly or indirectly through a dealer or lessor shall receive an express warranty for such facilitative device. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

(2) If a manufacturer or dealer fails to furnish the express warranty required by this section, the facilitative device shall be covered by a warranty the same as if an express warranty had been provided by the manufacturer or dealer pursuant to this section.

(3) Any entity that sells or leases facilitative devices in this state, including any entity that sells or leases through mail order or catalogue sales, shall designate an authorized servicer for such facilitative devices that is accessible to the consumer.

(4) (a) In the event that the selling dealer from whom the consumer purchased the facilitative device goes out of business or ceases to be an authorized dealer or service center for the manufacturer, or if the dealer or consumer moves or relocates to a location that makes it unreasonable for the consumer to seek warranty service from the selling dealer, or if the consumer is dissatisfied with the selling dealer, the consumer shall be responsible for contacting the manufacturer or another authorized dealer which will be responsible for facilitating the warranty service required with an authorized dealer, to be mutually agreed upon by the consumer and the manufacturer, which entity shall be referred to as the "alternative warranty service provider".

(b) In the event that an alternative warranty service provider is designated pursuant to paragraph (a) of this subsection (4), the consumer may only seek warranty service from such alternative warranty service provider.

**6-1-503. Remedies.** (1) If a new facilitative device does not conform to the applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, the selling dealer, or the alternative warranty service provider and makes the facilitative device available for repair within the warranty period, the nonconformity shall be repaired at no charge to the consumer. Any repairs performed pursuant to the provisions of this section shall be warranted for a period not less than the original warranty period.

(2) If the manufacturer authorizes the dealer or lessor to make the repair, the dealer or lessor shall make the repair and then be reimbursed by the manufacturer for the dealer's or lessor's cost for parts, labor, and repair if the nonconformity is a manufacturer's defect. A manufacturer shall respond to the dealer's or lessor's request for authorization to make a repair within three business days after such a request is made.

(3) If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the facilitative device, as required by this section, shall:



(a) If the facilitative device was purchased, take the following action at the direction of the consumer:

(I) Accept a return of the facilitative device, provide a replacement facilitative device of equal or greater value, and refund any collateral costs to the consumer, a holder of a perfected security interest in the facilitative device, or a third-party purchaser; or

(II) Accept a return of the facilitative device and refund to the consumer, holder of a perfected security interest in the facilitative device, or third-party purchaser not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid;

(b) If the facilitative device was leased, take all of the following actions at the direction of the consumer:

(I) Accept a return of the facilitative device;

(II) (A) Refund to the lessor or any holder of a perfected security interest in the facilitative device the current value of the written lease.

(B) For purposes of this subparagraph (II), "current value of the written lease" means the sum of the total amount for which the consumer is obligated during the term of the lease remaining after the early termination date, the dealer's early termination costs, and the value of the facilitative device on the lease expiration date, if the lease sets forth that value, less the lessor's early termination savings.

(III) Refund to the consumer or third-party purchaser the amount paid under the lease plus any collateral costs.

(4) (a) In the event that a dispute arises as to liability under this part 5 between or among a manufacturer, dealer, lessor, or consumer and the consumer is covered by any third-party insurer, such third-party insurer shall not be relieved of any obligation to provide benefits covered under its plan or applicable law.

(b) In the event that a facilitative device is found to be defective, the third-party payor described in paragraph (a) of this subsection (4) shall have all rights of recovery, including the right to costs, that the consumer would have had under this part 5.

**6-1-504. Remedies for consumers -- conditions.** (1) To receive a refund or a replacement facilitative device, the consumer of a purchased facilitative device shall first offer to transfer the facilitative device with the nonconformity to the manufacturer, selling dealer, or alternative warranty service provider.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the manufacturer or dealer shall provide the consumer with a refund or a replacement facilitative device.

(3) When a manufacturer or dealer provides a consumer with a refund or a replacement facilitative device, such consumer shall return the facilitative device with the nonconformity to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer.

**6-1-505. Remedies for consumers of leased facilitative devices -- conditions.** (1) To receive a refund due on a leased facilitative device, a consumer shall first offer to return the facilitative device with the nonconformity to the lessor.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the lessor shall provide the consumer with a refund.

(3) When a lessor provides a consumer with a refund, such consumer shall return the facilitative device with the nonconformity to such lessor.

(4) A lessor shall offer to transfer to the manufacturer or dealer possession of the facilitative device returned pursuant to subsection (3) of this section. Within thirty business days after receiving such offer, the manufacturer or dealer shall remit the refund amount to the lessor. When the manufacturer or dealer makes such refund, the lessor shall provide the manufacturer or dealer with the endorsements necessary to transfer possession to the manufacturer or dealer.

**6-1-506. Resale of a returned facilitative device -- disclosure required.** A facilitative device returned pursuant to this part 5 by a consumer in this state, or by a consumer in another state under a similar law of that state, shall not be sold or leased again in this state unless full disclosure is made to the prospective consumer of the reasons for the return.

**6-1-507. Other remedies -- waiver of rights void -- limitation of coverage.** (1) This part 5 shall not limit the rights or remedies available to a consumer under any other law of this state.

(2) This part 5 shall be in addition to and shall not limit the rights or remedies available to a consumer under any manufacturer's warranty with respect to a facilitative device or other technological device designed to be used by and assist a person with a disability, regardless of the retail price of the facilitative device or other technological device.

(3) If a consumer waives the rights granted to consumers pursuant to this part 5, such waiver shall be void as against public policy.

(4) Notwithstanding the remedies that are available to a consumer pursuant to this part 5, a consumer may pursue any other remedy, including an action to recover damages caused by a violation of this part 5. If a manufacturer or dealer is found to have violated this part 5, a consumer shall be awarded the amount of actual damages caused by the violation and reasonable attorney fees. The consumer may be awarded collateral costs and punitive damages.

(5) Nothing in this part 5 shall be deemed or construed to be a warranty to consumers of wheelchairs described in part 4 of this article.

**6-1-508. Fraudulent acts.** Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 5 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401(2), C.R.S., and which crime shall be punished as provided

in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

**6-1-509. Arbitration.** Disputes among manufacturers, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this part 5 shall be subject to arbitration pursuant to the Colorado rules of civil procedure. The award of the arbitration panel shall be binding upon the parties and shall only be subject to court review by trial de novo.

**6-1-510. Defect notification.** (1) A manufacturer shall be responsible for providing written notification to an owner, user, purchaser, dealer, lessor, or consumer of any known or discovered inherent defect in a facilitative device that affects the safety, usability, or reliability of that facilitative device. The manufacturer shall send such notification by first-class mail to the last-known address of the owner, user, purchaser, dealer, lessor, or consumer within fourteen days after learning of such a defect.

(2) A manufacturer shall be responsible for the costs of providing the notification required in subsection (1) of this section and for all costs associated with correcting any defect described in subsection (1) of this section.

(3) The provisions of this section shall apply without time limitations.

**6-1-511. Disclosures.** (1) Prior to the sale of any facilitative device, the seller shall disclose whether the facilitative device is new or used and whether any warranty applies to such facilitative device.

(2) Upon delivery of a new or used facilitative device, the seller shall advise the consumer of any warranty rights under this part 5 and the facilitative device's maintenance schedule and operating instructions and shall provide the consumer with a copy of the owner's manual.

(3) The disclosure required pursuant to subsection (1) of this section and the advisement required pursuant to subsection (2) of this section shall be in writing and shall, in the case of a consumer who is a person adjudicated not mentally competent, be provided to the guardian, parent, legal custodian, or primary caregiver of such person.

## **PART 6**

### **SELLERS OF MANUFACTURED HOMES -- REGISTRATION, ESCROW AND BONDING, AND CONTRACT REQUIREMENTS**

**6-1-601 to 6-1-606. (Repealed)**

## **PART 7**

### **SPECIFIC PROVISIONS**

**6-1-701. Registered hearing aid providers -- deceptive trade practices. (Repealed)**

**6-1-702. Unsolicited facsimiles - deceptive trade practice.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

- (a) Uses a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine;
- (b) Uses a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission:

- (I) The date and time the facsimile is sent;
  - (II) An identification of the person sending the facsimile; and
  - (III) The telephone number of the sending machine of the person; or
- (c) Violates 47 U.S.C. sec. 227 or any rule promulgated thereunder.

(2) For the purposes of this section, unless the context otherwise requires:

- (a) "Telephone facsimile machine" means equipment that has the capacity to:

- (I) Transcribe text or images from paper into an electronic signal and to transmit that signal over a regular telephone line; or
- (II) Transcribe text or images from an electronic signal received over a regular telephone line onto paper.

- (b) "Unsolicited advertisement" means material that advertises the commercial availability or quality of any property, good, or service and that is transmitted to a person without that person's prior express invitation or permission.

(3) (a) The provisions of this section shall not apply to:

- (I) A person who has an existing business relationship with the person receiving a facsimile; or

- (II) A nonprofit organization operating pursuant to 26 U.S.C. sec. 501(c) of the federal "Internal Revenue Code of 1986", as amended, that sends a facsimile to a nonmember recipient, if the nonprofit organization has received, by facsimile or other means, such nonmember recipient's prior express written invitation or permission to deliver facsimiles that includes the recipient's signature and facsimile number.

- (b) For the purposes of this subsection (3), "existing business relationship" means a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber, with or without an exchange of consideration on the basis of an inquiry, application, purchase, membership, or transaction by the residential or business subscriber regarding products or services offered by such person or entity.

**6-1-702.5. Commercial electronic mail messages - deceptive trade practice - remedies - definitions - short title - legislative declaration.** (1) This section shall be known and may be cited as the "Spam Reduction Act of 2008".

(2) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

- (a) Violates any provision of the federal "Controlling the Assault of Non-Solicited Pornography and Marketing ('CAN-SPAM') Act of 2003", 15 U.S.C. secs. 7701 to 7713, or

any rule promulgated under the federal act that can be enforced by states or providers of internet access service pursuant to 15 U.S.C. sec. 7706 (f) or (g);

(b) Knowingly fails to disclose the actual point-of-origin electronic mail address of a commercial electronic mail message in order to mislead or deceive the recipient as to the source or sender of the message;

(c) Knowingly falsifies electronic mail transmission information or other routing information for a commercial electronic mail message in order to mislead or deceive the recipient as to the source or sender of the message;

(d) Knowingly uses a third party's internet address or domain name without the third party's consent for the purposes of transmitting a commercial electronic mail message; or

(e) Knowingly sends a commercial electronic mail message to any person that has previously given the sender a do-not-email directive under 15 U.S.C. sec. 7704 (a) (3) (A) or provides the electronic mail address of any such person to a third party for the purpose of enabling the third party to send a commercial electronic mail message, other than pursuant to affirmative consent, to that electronic mail address.

(3) As used in this section:

(a) "Affirmative consent" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(b) "Commercial electronic mail message" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(c) "Electronic mail service provider" means a provider of internet access service, as defined in 47 U.S.C. sec. 231.

(d) "Sender" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(4)(a) In the case of any violation of this section, an electronic mail service provider whose network or facilities were used in the transmission or attempted transmission of a commercial electronic mail message may file a civil action in a court of competent jurisdiction and may, upon proof of such violation, recover such sums as are allowed under this subsection (4).

(b)(I) In any such action, if the electronic mail service provider prevails, the provider shall be entitled to actual damages. Upon a showing that the sender of a commercial electronic mail message violated any provision of this section, whether or not the violation resulted in a financial loss or injury, the electronic mail service provider may recover attorney fees and costs.

(II) In any such action, if the electronic mail service provider prevails, the provider is also entitled to recover, as part of the judgment, statutory damages in the amount of one thousand dollars for each commercial electronic mail message transmitted in violation of this section; except that the total amount of statutory damages awarded against a single defendant based on one transaction or occurrence shall not exceed ten million dollars.

(c) The remedies, duties, prohibitions, and penalties of this subsection (4) are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(d) At the request of any party to an action brought pursuant to this subsection (4), the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of any computer, computer network, computer data, or computer software

involved in order to prevent possible recurrence of the same or similar conduct by another person and to protect the trade secrets of any party.

(e) Electronic mail service providers that adopt and implement terms, conditions, or technical measures in good faith to prevent or prohibit the origination or transmission of commercial electronic mail messages in violation of this section shall be immune from civil liability for any such actions, and no provision of this section shall be construed to create any liability for such actions.

(f) No electronic mail service provider shall be liable for the mere transmission of commercial electronic mail messages over the provider's computer network or facilities.

(g) This section shall not be construed to require any electronic mail service provider to carry or deliver any electronic mail merely because a sender complies with the provisions of this section.

(h) This section shall apply when a commercial electronic mail message is sent to a computer located in Colorado or to an electronic mail address that the sender knows, or has reason to know, is held by a Colorado resident.

(5)(a) The attorney general is hereby specifically authorized to take all actions and invoke all remedies authorized under 15 U.S.C. sec. 7706 (f) to enforce this section. Such actions and remedies are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by this article and any other state or federal law.

(b) The attorney general is encouraged to and may, in his or her discretion, cooperate with an electronic mail service provider in an action by such provider under 15 U.S.C. sec. 7706 (g).

(6) The general assembly:

(a) Finds that all violations of the federal "CAN-SPAM Act of 2003" are inherently false and deceptive;

(b) Determines that falsity and deception in any portion of a commercial electronic mail message or an attachment thereto harms Colorado consumers and threatens Colorado's economy; and

(c) Declares that the intent of this section and of section 18-5-308, C.R.S., is to exercise state authority in a manner consistent with, and to the maximum extent permissible under, the federal preemption provisions of 15 U.S.C. sec. 7707 (b).

**6-1-703. Time shares -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities in connection with the advertisement or sale of a time share:

(a) Misrepresents the investment, resale, or rental value of any time share; the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or the period of time during which the accommodations or facilities contracted for will be available to the purchaser;

(b) Fails to allow any purchaser of a time share a right to rescind the sale within five calendar days after the sale;

- (c) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time share to rescind the sale either by telegram, mail, or hand delivery. For purposes of this section, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business.
- (d) Fails to refund any down payment or deposit made pursuant to a time share contract within seven days after the seller receives the purchaser's written notice of rescission.

**6-1-704. Health clubs -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities in connection with the advertisement or sale of a membership in a health club:

- (a) Fails to allow any buyer of a membership in a health club to rescind the membership contract within three business days after receipt by the buyer of a copy of the contract;
- (b) Fails to provide conspicuous notice of the right of a purchaser of a health club membership to rescind the sale either by telegram, mail, or hand delivery. For purposes of this section, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business.
- (c) Fails to allow the buyer, or the estate of the buyer, to cancel the membership contract when:
  - (I) The buyer dies;
  - (II) The buyer becomes totally physically disabled as determined by a licensed physician or advanced practice nurse for the duration of the membership contract;
  - (III) The health club is moved to a location that is more than five miles from the location of the establishment when the buyer entered into the membership contract;
  - (IV) The membership in the health club is transferred to a location of the same club or another club, which location is more than five miles from the location of the club when the buyer entered into the contract, and this transfer occurs because of cessation of health club services at the club location from which the membership is transferred;
  - (V) The seller permanently discontinues operation of the health club or sells the health club and the sale results in substantial alteration of the quality of health club services or facilities or the nature of benefits so that they no longer conform to the provisions of the membership contract, but there shall be a thirty-day "right to cure" during which the fees payable by the buyer under the membership contract shall be suspended and the health club may bring the services, facilities, and benefits into conformance with the provisions of the membership contract;
- (d) Fails to refund all payments made pursuant to the membership contract, less a prorated fee for days of actual use of the health club by the buyer, within fifteen days after the seller receives the buyer's written notice of rescission;
- (e) When a health club is planned or under construction, and the sale of the membership takes place before the health club is completed, fails to:

- (I) Disclose clearly and conspicuously in the membership contract the date on which the health club will open for use;
- (II) Escrow all preopening membership sales receipts in a separate account in a bank or trust company doing business in the state of Colorado or provide a cash bond, letter of credit, certificate of deposit, or other similar surety, in the amount of fifty thousand dollars, for the repayment of amounts actually paid under preopening membership agreements until the health club is open for business;
- (III) Allow the buyer to cancel the membership contract and receive a full refund of all payments made pursuant to the membership contract if the date the health club will open for use is delayed more than sixty days from the date of opening specified in the membership contract;
- (f) Sells any membership contract, the actual or financial duration of which, including any option to renew, is longer than twenty-four months; except that a person does not engage in a deceptive trade practice when such person sells any membership contract the actual or financial duration of which is not longer than thirty-six months with a buyer's option to renew annually thereafter if:
  - (I) The health club has been in operation in this state more than two years; and
  - (II) The health club maintains a bond with a corporate surety from a company authorized to do business in this state or other security acceptable to and approved by the attorney general; and
  - (III) The aggregate amount of the bond is one hundred thousand dollars for each club location; and
  - (IV) The bond is payable to the state for the benefit of any buyer injured in the event the health club goes out of business prior to the expiration of the buyer's membership contract; and
  - (V) The bond is maintained for so long as the health club has any membership contracts in place and outstanding, the specified term for which exceeds twenty-four months; and
  - (VI) The bond is not cancelled, revoked, or terminated except after notice to, and with the written consent of, the attorney general at least forty-five days in advance of such cancellation, revocation, or termination; and
  - (VII) The annual renewal option for continued membership contained in the membership contract is not automatic but requires that the buyer affirmatively accept the renewal option by notice in writing to the person selling the membership contract for reasonable consideration on or before the expiration of each contract term, but not more than six months prior to the expiration of any contract term; and
  - (VIII) In the event that the health club elects to cancel, revoke, or terminate the bond, it posts a notice of such action, in twenty-four-point bold-faced type, to its customers, on the front door of such health club; or
- (g) Makes any representation, orally or in writing, in connection with the offer or sale of a membership in a health club that a membership contract is for a lifetime or is for a perpetual membership, or uses coercive sales tactics, or misrepresents the quality, benefits, or nature of the services.



**6-1-705. Dance studios -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of contracts for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars:

(a) Fails to execute a written contract and to provide a copy of the contract to the purchaser at the time the purchaser signs it;

(b) Fails to include, printed in ten-point, bold-faced type in the contract:

(I) The total amount of the obligation the purchaser undertakes;

(II) All goods and services that the purchaser is to receive under the contract set forth in specific terms, including the total number or hours of dance instruction to be given by the dance studio under the contract broken down by different hourly rates, if applicable, and all other goods and services;

(III) The itemized cost of all goods and services to be provided under the contract, including but not limited to the cost per hour of dance instruction and the different hourly rates for different types of dance lessons, if any, and any charges to be paid by the purchaser for cost of travel, accommodations, or other expenses of dance studio owners, operators, managers, agents, or employees, the total cost of which shall equal the amount to be specified in the contract pursuant to subparagraph (I) of this paragraph (b); and

(IV) The purchaser's right to cancel as specified in paragraphs (c) to (e) of this subsection (1);

(c) Fails to include in the contract the following statement in bold-faced type under the conspicuous caption, **"PURCHASER'S RIGHT TO CANCEL"**:

**"YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE TERM OF ITS EFFECTIVENESS. YOU MUST GIVE WRITTEN NOTICE TO THE DANCE STUDIO THAT YOU DO NOT WANT TO BE FURTHER BOUND BY THIS CONTRACT. THE NOTICE OF CANCELLATION MAY BE SERVED IN PERSON, BY TELEGRAM, OR BY MAIL TO THE DANCE STUDIO AT THE ADDRESS STATED IN THIS CONTRACT OR AT THE LOCATION WHERE DANCE LESSONS ARE CONDUCTED. WITHIN THIRTY DAYS AFTER RECEIPT OF YOUR NOTICE OF CANCELLATION, THE DANCE STUDIO SHALL REFUND TO YOU THE CONTRACT PRICE LESS THE COST OF GOODS AND SERVICES ALREADY RECEIVED BY YOU AND AN AMOUNT OF LIQUIDATED DAMAGES EQUAL TO NOT MORE THAN TEN PERCENT OF THE COST OF THE REMAINING GOODS AND SERVICES.";**

(d) Fails to allow the contract to be cancelled by the purchaser upon the purchaser's serving written notice to the dance studio;

(e) Fails, upon cancellation of a contract for dance studio services, to refund to the purchaser all prepayments made under the contract, minus the total of:

(I) The amount equal to the cost of goods and services actually received by the purchaser under the contract; and

(II) An amount of liquidated damages equal to not more than ten percent of the cost of the remaining goods and services not received by the purchaser;

- (f) Subtracts a total amount under subparagraphs (I) and (II) of paragraph (e) of this subsection (1) that exceeds the total amount of the obligation as set out in subparagraph (I) of paragraph (b) of this subsection (1);
- (g) Fails to have a performance bond in the amount of twenty-five thousand dollars, as to each studio, location, or owner, for the benefit of any person who enters into a contract for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars and who is damaged by the failure of the dance studio to provide the services specified in the contract or by the failure of the dance studio to comply with this section, which performance bond guarantees the dance studio's performance of its contractual obligations with the purchaser in accordance with the provisions of this section, or fails to disclose in the contract with such purchaser the existence of the performance bond;
- (h) Sells or induces any person to purchase or to become obligated directly or contingently, or both, under more than one contract for dance studio services at the same time for the purpose of avoiding the provisions of this section; or
- (i) Assigns or accepts an assignment of dance studio services without the written consent of the purchaser.

**6-1-706. Buyers' clubs -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of any contract of membership in a buyers' club in which the price of the membership equals or exceeds one hundred dollars:

- (a) Fails to allow any purchaser of a membership in a buyers' club to rescind the membership contract at any time prior to the close of business on the next business day following the day the purchaser signs the contract;
- (b) Fails to provide in the membership contract the following mandatory disclosure under the heading, **"PURCHASER'S RIGHT TO CANCEL": "THE PURCHASER MAY CANCEL THIS CONTRACT FOR ANY REASON AT ANY TIME PRIOR TO THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY FOLLOWING THE DAY THE PURCHASER SIGNS THE MEMBERSHIP CONTRACT BY DELIVERING OR MAILING TO THE BUYERS' CLUB WRITTEN NOTICE OF CANCELLATION. NOTICE OF CANCELLATION, IF SENT BY MAIL, IS DEEMED TO BE GIVEN AS OF THE DATE THE MAILED NOTICE WAS POSTMARKED."** Said heading and disclosure shall be in capital letters in no less than ten-point, bold-faced type.
- (c) Fails to refund all payments made pursuant to the membership contract within fifteen days after the buyers' club receives notice of cancellation from the purchaser.

**6-1-707. Use of title or degree -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) (I) Claims, either orally or in writing, to possess either an academic degree or an honorary degree or the title associated with said degree, unless the person has, in fact, been awarded said degree from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such an agency;

(B) Provided, operated, and supported by a state government or any of its political subdivisions or by the federal government;

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States;

(D) A religious seminary, institute, college, or university which that offers only educational programs that prepare students for a religious vocation, career, occupation, profession, or lifework, and the nomenclature of whose certificates, diplomas, or degrees clearly identifies the religious character of the educational program;

(E) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.

(II) This paragraph (a) shall not apply to persons claiming degrees or certificates that were submitted as a requirement of the application process for licensure, certification, or registration pursuant to title 12, C.R.S.

(III) No person awarded a doctorate degree from an institution not listed in paragraph (a) of this subsection (1) shall claim in the state, either orally or in writing, the title "Dr." before the person's name or any mark, appellation, or series of letters, numbers, or words, such as, but not limited to, "Ph.D.", "Ed.D.", "D.N.", or "D.Th.", which signify, purport, or are generally taken to signify satisfactory completion of the requirements of a doctorate degree, after the person's name.

(b) Claims either orally or in writing to be a "dietitian", "dietician", "certified dietitian", or "certified dietician" or uses the abbreviation "C.D." or "D." to indicate that such person is a dietitian, unless such person:

(I) Possesses a baccalaureate, masters, or doctorate degree in human nutrition, foods and nutrition, dietetics, nutrition education, food systems management, or public health nutrition from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such accrediting agency;

(B) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.; or

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to a baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States; and

(II) Meets one of the following:

(A) Completes at least nine hundred hours of a planned, continuous, preprofessional work experience in a nutrition or dietetic practice under the supervision of a qualified dietitian; or  
 (B) Holds a certificate of registered dietitian through the commission on dietetic registration;  
 (c) (Deleted by amendment, L. 2008, pp. 829-30, § 2)  
 (d) (I) Claims either orally or in writing to be a "certified optician" or "certified opticien", unless such person holds a current certificate of competence issued by the American board of opticianry. Each certificate shall be prominently displayed or maintained in such person's place of business and made available for immediate inspection and review by any consumer or agent of the state of Colorado. No person may associate a service, product, or business name with the title "certified optician" unless such person holds the required certificate of competence. This paragraph (d) shall not apply to persons authorized under article 36 or 40 of title 12, C.R.S., to practice medicine or optometry.  
 (II) Performs or claims orally or in writing to be able to perform the following procedures, and such person is a certified optician:  
 (A) Vision therapy;  
 (B) Refractions;  
 (C) Automated refractions; except that a certified optician may use an auto refractor to provide vision screenings for the sole purpose of determining if the subject of the screening needs a further eye examination;  
 (D) Refractometry;  
 (E) Fitting contact lenses;  
 (F) Keratometry or automated keratometry; or  
 (G) Any other act that constitutes the practice of optometry or the practice of medicine.  
 (III) A certified optician does not engage in a deceptive trade practice under subparagraph (II) of this paragraph (d), if said optician performs the described procedures under the direction and supervision of a person who has statutory authority under title 12, C.R.S., to supervise the work of others within the scope of his or her license.  
 (e) Claims to be a "sign language interpreter", "interpreter for the deaf", "deaf interpreter", "ASL-English interpreter", "American sign language (ASL) interpreter", "transliterator", "certified sign language interpreter", "certified interpreter for the deaf", "certified deaf interpreter", "certified ASL-English interpreter", "certified American sign language (ASL) interpreter", or "certified transliterator", unless he or she holds a current certification issued by the registry of interpreters for the deaf or a successor organization. A registry of interpreters for the deaf, or successor organization, membership card that shows proof of current membership and certification shall be made available for immediate inspection and review by any consumer or agent of the state of Colorado.

**6-1-708. Motor vehicle sales and leases -- deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:  
 (a) Commits any of the following acts pertaining to the sale or lease of a motor vehicle or a used motor vehicle:

(I) Guarantees to a purchaser or lessee of a motor vehicle or used motor vehicle who conditions such purchase or lease on the approval of a consumer credit transaction as defined in section 5-1-301 (12), C.R.S., that such purchaser or lessee has been approved for a consumer credit transaction if such approval is not final. For purposes of this subparagraph (I), "guarantee" means a written document or oral representation between the purchaser or lessee and the person selling or leasing the vehicle that leads such purchaser or lessee to a reasonable good faith belief that the financing of such vehicle is certain.

(II) Accepts a used motor vehicle as a trade-in on the purchase or lease of a motor vehicle or used motor vehicle and sells or leases such used motor vehicle before the purchaser or lessee has been approved for a consumer credit transaction as defined in section 5-1-301 (12), C.R.S., if such approval is a condition of the purchase or lease;

(III) Fails to return to the purchaser or lessee any collateral or down payment tendered by such purchaser or lessee conditioned upon a guarantee by a motor vehicle dealer or used motor vehicle dealer that a consumer credit transaction as defined in section 5-1-301 (12), C.R.S., has been approved for such purchaser or lessee, if such approval was a condition of the sale or lease and if such financing is not approved and the purchaser or lessee is required to return the vehicle;

(b) Fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle is a salvage vehicle, as defined in section 42-6-102 (17), C.R.S., that a vehicle was repurchased by or returned to the manufacturer from a previous owner for inability to conform the motor vehicle to the manufacturer's warranty in accordance with article 10 of title 42, C.R.S., or with any other state or federal motor vehicle warranty law, or knowingly fails to disclose, in writing, prior to sale, to the purchaser that a motor vehicle has sustained material damage at any one time from any one incident.

(2) For purposes of this section, if a motor vehicle or used motor vehicle dealer guarantees financing and if approval for financing is a condition of the sale or lease, such motor vehicle or used motor vehicle dealer shall not retain any portion of such purchaser's down payment or any trade-in vehicle as payment of rent on any vehicle released by such dealer to such purchaser pending approval of financing even if such dealer has obtained a waiver of such purchaser's right to return a vehicle or has contracted for a rental agreement with such purchaser.

**6-1-709. Sales of manufactured homes -- deceptive trade practices.** A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in conduct that constitutes an unlawful manufactured home sale practice as described in section 24-32-3326, C.R.S.

**6-1-710. Installation or reinstallation of false air bag -- deceptive trade practices -- criminal liability.** (1) A person engages in a deceptive trade practice when such person installs or reinstalls, as part of a vehicle inflatable restraint system, any object in lieu of an air bag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle.

(2) Any person who violates subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars and not more than five thousand dollars per violation, or imprisonment in the county jail for up to one year, or both.

**6-1-711. Restrictions on credit card receipts -- legislative declaration -- application --**

**definition.** (1) The general assembly hereby finds, determines, and declares that credit, particularly the use of credit cards, is an important tool for consumers in today's economy. Unscrupulous persons often fraudulently use the credit card accounts of others by stealing the credit card itself or obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's credit card account. The general assembly, therefore, finds, determines, and declares that protection from unauthorized use of credit card accounts is necessary.

(2) No person that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or print the credit card expiration date, or both, on a credit card receipt.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(4) For the purposes of this section, "credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit; those cards pursuant to which unpaid balances are payable upon demand; and any card or device used to withdraw moneys from a bank account.

(5) (a) Except as provided in paragraph (c) of this subsection (5), this section shall apply to any entity formed on and after April 25, 2002, that uses a cash register or any other machine or device that electronically imprints receipts on credit card transactions and is placed into service on or after the effective date of this section.

(b) Except as provided in paragraph (c) of this subsection (5), on and after January 1, 2004, this section shall apply to any cash register and any other machine or device that electronically imprints receipts on credit card transactions for entities that were formed on or before April 25, 2002.

(c) On and after January 1, 2005, this section shall apply to:

(I) Institutions of higher education; and

(II) Persons who employ no more than twenty-five employees or who have generated no more than five million dollars annually in revenues from the person's business activities.

**6-1-712. Discount health plan and cards - deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Solicits, markets, advertises, promotes, or sells to a consumer residing in Colorado a discount health plan and such plan materials:

- (I) Fail to provide to the consumer a clear and conspicuous disclosure that the discount health plan is not insurance and that the plan only provides for discount health care services from participating providers within the plan;
- (II) Fail to provide the name, address, and telephone number of the administrator of the discount health plan;
- (III) Fail to make available to the consumer through a toll-free telephone number, upon request of the consumer, a complete and accurate list of the participating providers within the plan in the consumer's local area and a list of the services for which the discounts are applicable. Such list shall be available to the consumer upon request commencing with the time of purchase and shall be updated at least every six months.
- (IV) Fail to use common usage for words and phrases in describing the discounts or access to discounts offered, and such failure results in representations of the discounts that are misleading, deceptive, or fraudulent;
- (V) Fail to provide to the consumer notice of the right to cancel such discount health plan pursuant to paragraph (c) of this subsection (1);
- (b) Offers discounted health services or products that are not authorized by a contract with each provider listed in conjunction with the discount health plan;
- (c) Fails to allow a purchaser of a discount health plan to cancel such plan within thirty days after purchase;
- (d) Fails to refund all membership fees paid to the discount health plan by the consumer within thirty days after timely notification of the cancellation of the plan to the discount health plan administrator pursuant to paragraph (c) of this subsection (1).
- (2) The provisions of this section shall not apply to:
  - (a) A carrier as defined in section 10-16-102 (8), C.R.S., that offers discounts for services to a covered person, as defined in section 10-16-102 (13.5), C.R.S., and such services are supplemental to and not part of the health coverage plan of the carrier;
  - (b) A medicare endorsed drug card as approved by the centers for medicare and medicaid services pursuant to the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Public Law 108-173.
- (3) For the purposes of this section, unless the context otherwise requires:
  - (a) "Health care services" shall have the same meaning as in section 10-16-102 (22), C.R.S.
  - (b) "Provider" shall have the same meaning as in section 10-16-102 (36), C.R.S.

**6-1-713. Disposal of personal identifying documents - policy.** (1) Each public and private entity in the state that uses documents during the course of business that contain personal identifying information shall develop a policy for the destruction or proper disposal of paper documents containing personal identifying information.

(2) For the purposes of this section, "personal identifying information" means: A social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data; an employer, student, or military identification number; or a financial transaction device.

- (3) A public entity that is managing its records in compliance with part 1 of article 80 of title 24, C.R.S., shall be deemed to have met its obligations under subsection (1) of this section.
- (4) Unless an entity specifically contracts with a recycler or disposal firm for destruction of documents that contain personal identifying information, nothing herein shall require a recycler or disposal firm to verify that the documents contained in the products it receives for disposal or recycling have been properly destroyed or disposed of as required by this section.

**6-1-714. Unfair drug pricing practice – definitions – deceptive trade practice.** (1) As used in this section, unless the context otherwise requires:

- (a) “Emergency” means a declaration made by the department of public health and environment pursuant to section 25-1.5-101(1)(aa), C.R.S., after the department has determined that there is a shortage of drugs critical to public safety.
- (b) “Unfair drug pricing” means charging a consumer an unconscionable amount for the sale of a drug. Unfair drug pricing occurs if:
- (I) The price charged by a wholesaler, distributor, or retailer exceeds by more than ten percent the average price for the drug charged by that wholesaler, distributor, or retailer during the thirty days immediately preceding the declaration of an emergency; and
- (II) The increase in the amount charged by a wholesaler, distributor, or retailer is not attributable to cost factors of the retailer, including, but not limited to, replacement costs, taxes, and transportation costs incurred by that wholesaler, distributor, or retailer.
- (2) A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, the person engages in the practice of unfair drug pricing.

**6-1-715. Confidentiality of social security numbers** (1) Except as provided in subsections (2) to (4) of this section, a person or entity may not do any of the following:

- (a) Publicly post or publicly display in any manner an individual’s social security number. “Publicly post” or “publicly display” means to intentionally communicate or otherwise make available to the general public;
- (b) Print an individual’s social security number on any card required for the individual to access products or services provided by the person or entity;
- (c) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted;
- (d) Require an individual to use his or her social security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site; and
- (e) Print an individual’s social security number on any materials that are mailed to the individual, unless state or federal law requires, permits, or authorizes the social security number to be on the document to be mailed. Notwithstanding this paragraph (e), social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of the social security number. A social security number that is permitted to be mailed under this section may



not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) (a) A person or entity that has used, prior to the effective date of this section, an individual's social security number in a manner inconsistent with subsection (1) of this section, may continue using that individual's social security number in that manner on or after the effective date of this section if all of the following conditions are met:

(I) The use of the social security number is continuous. If the use is stopped for any reason, subsection (1) of this section shall apply.

(II) The person or entity provides the individual with an annual disclosure that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subsection (1) of this section.

(b) The person or entity shall implement a written request by an individual to stop the use of his or her social security number in a manner prohibited by subsection (1) of this section within thirty days after the receipt of the request. The person or entity may not impose a fee or charge for implementing the request.

(c) The person or entity shall not deny services to an individual because the individual makes a written request pursuant to paragraph (b) of this subsection (2).

(3) This section shall not prevent the collection, use, or release of a social security number as required, permitted, or authorized by state or federal law or the use of a social security number for internal verification or administrative purposes, including by the department of revenue.

(4) This section shall not apply to:

(a) Documents or records that are recorded or required to be open to the public pursuant to the constitution or laws of this state or by court rule or order, and this section shall not limit access to these documents or records; or

(b) An entity that is subject to the federal "Health Insurance Portability and Accountability Act of 1996", as amended, 42 U.S.C. sec. 1320d to 1320d-9.

**6-1-716. Notification of security breach.** (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Breach of the security of the system" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or commercial entity. Good faith acquisition of personal information by an employee or agent of an individual or commercial entity for the purposes of the individual or commercial entity is not a breach of the security of the system if the personal information is not used for or is not subject to further unauthorized disclosure.

(b) "Commercial entity" means any private legal entity, whether for-profit or not-for-profit.

(c) "Notice" means:

(I) Written notice to the postal address listed in the records of the individual or commercial entity;

(II) Telephonic notice;

(III) Electronic notice, if a primary means of communication by the individual or commercial entity with a Colorado resident is by electronic means or the notice provided is consistent

with the provisions regarding electronic records and signatures set forth in 15 U.S.C. sec. 7001 et seq.; or

(IV) Substitute notice, if the individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed two hundred fifty thousand dollars, the affected class of persons to be notified exceeds two hundred fifty thousand Colorado residents, or the individual or the commercial entity does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

(A) E-mail notice if the individual or the commercial entity has e-mail addresses for the members of the affected class of Colorado residents;

(B) Conspicuous posting of the notice on the web site page of the individual or the commercial entity if the individual or the commercial entity maintains one; and

(C) Notification to major statewide media.

(d) (I) "Personal information" means a Colorado resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when the data elements are not encrypted, redacted, or secured by any other method rendering the name or the element unreadable or unusable:

(A) Social security number;

(B) Driver's license number or identification card number;

(C) Account number or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.

(II) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(2) **Disclosure of breach.** (a) An individual or a commercial entity that conducts business in Colorado and that owns or licenses computerized data that includes personal information about a resident of Colorado shall, when it becomes aware of a breach of the security of the system, conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused. The individual or the commercial entity shall give notice as soon as possible to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur. Notice shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(b) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately following discovery of a breach, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach, except that such cooperation shall not be deemed to require the disclosure of confidential business information or trade secrets.

(c) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and the law enforcement agency has notified the individual or commercial entity that conducts business in Colorado not to send notice required by this section. Notice required by this section shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation and has notified the individual or commercial entity that conducts business in Colorado that it is appropriate to send the notice required by this section.

(d) If an individual or commercial entity is required to notify more than one thousand Colorado residents of a breach of the security of the system pursuant to this section, the individual or commercial entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. sec. 1681a (p), of the anticipated date of the notification to the residents and the approximate number of residents who are to be notified. Nothing in this paragraph (d) shall be construed to require the individual or commercial entity to provide to the consumer reporting agency the names or other personal information of breach notice recipients. This paragraph (d) shall not apply to a person who is subject to title V of the federal “Gramm-Leach-Bliley Act”, 15 U.S.C. sec. 6801 et seq.

(3) **Procedures deemed in compliance with notice requirements.** (a) Under this section, an individual or commercial entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information and whose procedures are otherwise consistent with the timing requirements of this section shall be deemed to be in compliance with the notice requirements of this section if the individual or commercial entity notifies affected Colorado customers in accordance with its policies in the event of a breach of security of the system.

(b) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with this section.

(4) **Violations.** The attorney general may bring an action in law or equity to address violations of this section and for other relief that may be appropriate to ensure compliance with this section or to recover direct economic damages resulting from a violation, or both. The provisions of this section are not exclusive and do not relieve an individual or a commercial entity subject to this section from compliance with all other applicable provisions of law.

**6-1-717 Influencing a real estate appraisal.** (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, the person:

(a) Knowingly submits a false or misleading appraisal in connection with a dwelling offered as security for repayment of a mortgage loan; or

(b) Directly or indirectly compensates, coerces, or intimidates an appraiser, or attempts, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of

influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a mortgage loan.

(2) The prohibition referred to in subsection (1) of this section shall not be construed as prohibiting a person from requesting an appraiser to:

- (a) Consider additional, appropriate property information;
- (b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
- (c) Correct errors in the appraisal report.

**6-1-718. Ticket sales and resales - prohibitions - unlawful conditions - definitions. (1)**

As used in this section, unless the context otherwise requires:

- (a) "Operator" means a person or entity who owns, operates, or controls a place of entertainment or who promotes or produces entertainment and that sells a ticket to an event for original sale, including an employee of such person or entity.
  - (b) "Original sale" means the first sale of a ticket by an operator.
  - (c) "Place of entertainment" means a public or private entertainment facility, such as a stadium, arena, racetrack, museum, amusement park, or other place where performances, concerts, exhibits, athletic games, or contests are held, for which an entry fee is charged, to which the public is invited to observe, and for which tickets are sold. "Place of entertainment" does not include a ski area.
  - (d) "Purchaser" means a person or entity who purchases a ticket to a place of entertainment.
  - (e) "Resale" or "resold" means a sale other than the original sale of a ticket by a person or entity.
  - (f) "Reseller" means a person or entity that offers or sells tickets for resale after the original sale by the operator including an entity that operates a platform or exchange for the purchase and sale of tickets to events that also engages in the purchase and resale of the ticket either on behalf of the operator or on its own behalf if a reseller.
  - (g) "Ticket" means a license issued by the operator of a place of entertainment for admission to an event at the date and time specified on the ticket, subject to the terms and conditions as specified by the operator.
- (2) Resellers shall guarantee a full refund to a purchaser if:
- (a) The event for which the ticket was resold is cancelled;
  - (b) The ticket does not or would not in fact grant the purchaser admission to the event for which the ticket was resold;
  - (c) The ticket is counterfeit; or
  - (d) The ticket fails to conform to its description as advertised or as represented to the purchaser by the reseller.
- (3)(a) It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale, including, but not limited to, a term or condition:
- (I) That restricts resale in a subscription or season ticket package agreement as a condition of purchase;

- (II) That a purchaser must comply with to retain a ticket for the duration of a subscription or season ticket package agreement that limits the rights of the purchaser to resell the ticket;
  - (III) That a purchaser must comply with to retain any contractually agreed-upon rights to purchase future subscriptions or season ticket package agreements; or
  - (IV) That imposes a sanction on the purchaser if the sale of the ticket is not through a reseller approved by the operator.
- (b) Nothing in this section shall be deemed to prohibit an operator from prohibiting the resale of a contractual right in a season ticket package agreement that gives the original purchaser a priority or other preference to enter into a subsequent season ticket package agreement with the operator.
- (4) A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event, regardless of whether the ticket is subject to a subscription or season ticket package agreement, based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.
- (5) Nothing in this section shall be construed to prohibit an operator from maintaining and enforcing policies regarding conduct or behavior at or in connection with the operator's venue. An operator may revoke or restrict season tickets for reasons relating to a violation of venue policies and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct.

**6-1-719. Truth in music advertising.** (1) Definitions. As used in this section, unless the context otherwise requires:

- (a) "Performing group" means a vocal or instrumental group seeking to use the name of a recording group.
  - (b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which at least one of the members has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.
  - (c) "Sound recording" means a work that results from the fixation, on or in a recording medium or other material object, of a series of musical, spoken, or other sounds regardless of the nature of the medium or object, such as a disk, tape, or other phono record, in which the sounds are recorded.
- (2) Production. (a) Except as otherwise provided in paragraph (b) of this subsection (2), it is unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group.
- (b) Paragraph (a) of this subsection (2) does not apply if:
- (I) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office;
  - (II) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

- (III) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;
- (IV) The advertising does not relate to a live musical performance or production taking place in this state; or
- (V) The performance or production is expressly authorized by the recording group.
- (3) Restraining prohibited acts. In addition to the actions and remedies specified in part 1 of this article that may apply:
  - (a) Injunction. Whenever the attorney general or a district attorney has reason to believe that a person is advertising, conducting, or about to advertise or conduct a live musical performance or production in violation of this section and that proceedings would be in the public interest, the attorney general or district attorney may bring an action in the name of the state against the person to restrain that practice by temporary or permanent injunction.
  - (b) Payment of costs and restitution. Whenever a court issues a permanent injunction to restrain and prevent violations of this section as authorized in paragraph (a) of this subsection (3), the court may, in its discretion, direct that the defendant restore to any person in interest any moneys or property, real or personal, that may have been acquired by means of a violation of this section, under terms and conditions to be established by the court.
  - (c) Penalty. A person who violates this section is liable to the state for a civil penalty of not less than five thousand dollars nor more than fifteen thousand dollars per violation, which civil penalty shall be in addition to any other relief that may be granted under this subsection (3) but which shall not be cumulative with the penalty specified in section 6-1-112. Each performance or production that violates this section constitutes a separate violation.

**6-1-720. Deceptive trade practice - on-line event ticket sales.** (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, such person:

- (a) Uses or causes to be used a software application that runs automated tasks over the internet to access a computer, computer network, or computer system, or any part thereof, for the purpose of purchasing tickets in excess of authorized limits for an on-line event ticket sale with the intent to resell such tickets; or
  - (b) Uses or causes to be used a software application that runs automated tasks over the internet that circumvents or disables any electronic queues, waiting periods, or other sales volume limitation systems associated with an on-line event ticket sale.
- (2) As used in this section, unless the context otherwise requires:
- (a) "In excess of authorized limits", with regard to an on-line purchase of tickets, means exceeding a restriction on the number of individual tickets that can be purchased by any single person or circumventing any other terms and conditions of access to an on-line event ticket sale established by the event sponsor or promoter.
  - (b) "On-line event ticket sale" means an electronic system utilized by the sponsor or promoter of a sporting or entertainment event to sell tickets to such event to the public over the internet.
- (3) This section shall not prohibit the resale of tickets in a secondary market by a person other than the event sponsor or promoter.

(4) Every ticket acquired in violation of this section shall constitute a separate violation for purposes of assessing a civil penalty under section 6-1-112(1)(a) and (1)(b).

**6-1-721. Like-kind exchanges by exchange facilitators - definitions.** (1) Legislative declaration. The general assembly hereby:

(a) Finds that, absent enactment of this section, Colorado has no requirements for the protection of taxpayers who engage persons or entities that facilitate like-kind exchanges pursuant to 26 U.S.C. sec. 1031; and

(b) Determines that, to protect taxpayers who engage exchange facilitators, exchange facilitators should meet certain requirements and follow certain procedures.

(2) Definitions. As used in this section, unless the context otherwise requires:

(a) "Affiliated with" means that a person directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the other specified person.

(b) "Colorado property" means real property located in Colorado; except that replacement property need not be located in Colorado.

(c)(I) "Exchange facilitator" means a person that holds a taxpayer's exchange funds and that:

(A) For a fee, facilitates an exchange of like-kind Colorado property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished Colorado property and transfer a replacement property to the taxpayer as an exchange facilitator, as is defined in 26 CFR 1.1031 (k)-1 (g) (4), or enters into an agreement with a taxpayer to take title to Colorado property as an exchange accommodation titleholder, as that term is defined in federal internal revenue service revenue procedure 2000-37, or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as those terms are defined in 26 CFR 1.1031 (k)-1 (g) (3), except as otherwise provided in subparagraph (II) of this paragraph (c); or

(B) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator regarding Colorado property.

(II) "Exchange facilitator" does not include:

(A) The taxpayer or disqualified person, as defined under 26 CFR 1.1031 (k)-1 (k), seeking to qualify for the nonrecognition provisions of 26 U.S.C. sec. 1031;

(B) A bank, savings bank, savings and loan association, building and loan association, or credit union; a bank or savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency; an operating subsidiary of such entities; or an employee or exclusive agent of any of such entities, including, without limitation, a subsidiary that is owned or controlled by such entities;

(C) A person who advertises for and teaches seminars or classes for, or gives presentations to, attorneys, accountants, real estate professionals, tax professionals, or other professionals, where the primary purpose is to teach the professionals about tax-deferred exchanges or train them to act as exchange facilitators;

(D) An exchange facilitator, as defined in 26 CFR 1.1031 (k)-1 (g) (4), whose sole business in this state as an exchange facilitator consists of holding exchange funds from the disposition of relinquished property located outside this state; or

(E) An entity that is wholly owned by an exchange facilitator or is wholly owned by the owner of an exchange facilitator and is used by that exchange facilitator to facilitate exchanges or to take title to Colorado property as an exchange accommodation titleholder, as defined in federal internal revenue service revenue procedure 2000-37.

(III) For purposes of this paragraph (c), "fee" means compensation of any nature, direct or indirect, monetary or in-kind, that is received by a person or a related person as defined in 26 U.S.C. sec. 1031 (f) (3) for any services relating to or incidental to the exchange of like-kind property under 26 U.S.C. sec. 1031.

(d) "Like-kind exchange" means a section 1031 exchange that is subject to 26 U.S.C. sec. 1031.

(e) "Publicly traded company" means a corporation whose securities are publicly traded on a stock exchange that is regulated by the United States securities and exchange commission. The term "publicly traded company" also includes all subsidiaries of such publicly traded company.

(f) "Section 1031 exchange" means an exchange conducted pursuant to 26 U.S.C. sec. 1031 that allows investors to defer the tax on capital gains.

(g) "Taxpayer exchange funds" or "exchange funds" means money a taxpayer entrusts to an exchange facilitator.

(3) Deceptive trade practices. A person engages in a deceptive trade practice when a person acts as an exchange facilitator and:

(a)(I) Except as specified in subparagraph (III) of this paragraph (a), fails to notify all current clients of any change in control of the exchange facilitator within two business days after the effective date of the change by:

(A) Facsimile, e-mail transmission, or first-class mail; and

(B) Posting such notice on the exchange facilitator's web site for a period ending not sooner than ninety days after the change in control.

(II) The notice required in subparagraph (I) of this paragraph (a) shall specify the name, address, and other contact information of the transferees.

(III) If the exchange facilitator is a publicly traded company and remains a publicly traded company after a change in control, the exchange facilitator need not notify its client of the change in control.

(IV) For purposes of this paragraph (a), "change in control" means any transfer within twelve months of more than fifty percent of the assets or ownership interests, directly or indirectly, of the exchange facilitator.

(b)(I) Fails to maintain adequate financial assurance and errors and omissions insurance or deposits. An exchange facilitator may maintain bonds, insurance policies, deposits, or irrevocable letters of credit in excess of the amounts required by this subparagraph (I). An exchange facilitator shall at all times:

(A) Maintain a fidelity bond or bonds executed by an insurer authorized to do business in this state in the amount of at least one million dollars and maintain a policy of errors and



omissions insurance, in an amount of at least two hundred fifty thousand dollars, executed by an insurer authorized to do business in this state;

(B) Deposit an amount of cash or irrevocable letters of credit in an amount of at least the sum of the amounts specified in sub-subparagraph (A) of this subparagraph (I) in an interest-bearing deposit account or in a money market account with a financial institution of the exchange facilitator's choice, with the interest earned on such account accruing to the exchange facilitator; or

(C) Deposit all exchange funds in a qualified escrow or qualified trust as those terms are defined under 26 CFR 1.1031(k)-1 (g) (3) with a financial institution and provide that any withdrawals from such qualified escrow or qualified trust require the taxpayer's and the exchange facilitator's written authorization.

(II) A person claiming to have sustained damage by reason of the failure of an exchange facilitator to comply with this section may file a claim to recover damages from the bond or deposit described in this paragraph (b).

(c) Fails to act as a custodian for all exchange funds, including money, Colorado property, other consideration, or instruments received by the exchange facilitator from or on behalf of the taxpayer, except funds received as the exchange facilitator's compensation. As used in this paragraph (c), "custodian" means a person who has the same responsibilities as a fiduciary under Colorado law to protect and preserve assets and shall not mean a person who has the same responsibilities as a fiduciary under Colorado law to increase assets or to accomplish other fiduciary duties. Exchange funds are not subject to execution or attachment on any claim against an exchange facilitator. An exchange facilitator shall not knowingly keep or cause to be kept any money in a financial institution under any name designating the money as belonging to a taxpayer unless the money equitably belongs to the taxpayer and was actually entrusted to the exchange facilitator by the taxpayer. Taxpayer exchange funds in excess of two hundred fifty thousand dollars shall be invested or deposited in such manner as to require both the taxpayer's and the exchange facilitator's commercially reasonable means of authorization for withdrawal, including: The taxpayer's delivery to the exchange facilitator of the taxpayer's authorization to disburse exchange funds, and the exchange facilitator's delivery to the depository of the exchange facilitator's authorization to disburse exchange funds; or delivery to the depository of both the taxpayer's and the exchange facilitator's authorizations to disburse exchange funds. An exchange facilitator shall provide the taxpayer with written notification of the manner in which the exchange funds will be invested or deposited, shall invest or deposit exchange funds for the benefit of the taxpayer in investments that meet a standard of care that an ordinarily prudent investor would use when dealing with the property of another, and shall satisfy investment goals of liquidity and preservation of principal. For purposes of this paragraph (c), a prudent investor standard of care shall be deemed to have been violated if:

(I) A taxpayer's exchange funds are commingled by the exchange facilitator with the operating accounts of the exchange facilitator or with the exchange funds of another taxpayer; except that an exchange facilitator may aggregate exchange funds. For purposes of this subparagraph (I):

(A) "Aggregate" means to combine exchange funds of multiple taxpayers for investment purposes to achieve common investment goals and efficiencies. Exchange funds that have been aggregated into common investments shall be readily identifiable by the financial institution or other regulated investment custodian holding the funds as to each taxpayer for whom they are held through an accounting or subaccounting system.

(B) "Commingle" means to mix together exchange funds of taxpayers with other funds belonging to or under the control of the exchange facilitator in such a manner that a taxpayer's exchange funds cannot be distinguished from other funds belonging to or under the control of the exchange facilitator.

(II) Exchange funds are loaned or otherwise transferred to any person or entity affiliated with the exchange facilitator; except that this subparagraph (II) shall not apply to a transfer or loan made to a financial institution that is the parent of or affiliated with the exchange facilitator or from an exchange facilitator to an exchange accommodation titleholder, as defined in federal internal revenue service revenue procedure 2000-37, as required under the section 1031 exchange contract; or

(III) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to the taxpayer and does not preserve the principal of the exchange funds. The deposit of funds in a financial institution exempted from this section pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (c) of subsection (2) of this section shall be deemed to be sufficiently liquid to meet the requirements of this subparagraph (III).

(d) Commits any of the following:

(I) Knowingly makes any material misrepresentation concerning an exchange facilitator's transaction that is intended to mislead another;

(II) Pursues a continued or flagrant course of misrepresentation or makes false statements through advertising or otherwise;

(III) Fails, within a reasonable time, to account for any money or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(IV) Engages in any conduct constituting fraudulent or dishonest dealing;

(V) Is convicted of, or, in the case of an entity, one or more of its owners, officers, directors, or employees who has access to exchange funds is convicted of, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property; except that commission of such crime by an officer, director, or employee of an exchange facilitator shall not be considered a violation of this subparagraph (V) if the employment or appointment of the officer, director, or employee has been terminated and no clients of the exchange facilitator were harmed or full restitution has been made to all harmed clients;

(VI) Wilfully fails to fulfill an exchange facilitator's contractual duties to the taxpayer to deliver property or funds to the taxpayer unless such failure is due to circumstances beyond the control of the exchange facilitator;

(VII) Materially violates this section or aids, abets, or knowingly permits any person to violate this section;

(VIII) Commits an act that does not meet generally accepted standards of practice for ordinarily prudent investors or fails to perform an act necessary to meet generally accepted standards of practice for ordinarily prudent investors;

(IX) Fails to keep appropriate business and transaction records, falsifies such records, or knowingly and wilfully makes incorrect entries of an essential nature on such records; except that an exchange facilitator may dispose of records after a reasonable time pursuant to the exchange facilitator's document retention and document destruction policy;

(X) Is disciplined in any way by a national certifying agency or by a regulatory agency of another jurisdiction for conduct that relates to the person's employment as an exchange facilitator; or

(XI) Is convicted of or pleads guilty or nolo contendere to a felony or any crime defined in title 18, C.R.S., that relates to the person's employment as an exchange facilitator. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction or plea.

**6-1-722. Gift certificates - validity - exemptions - definitions.** (1)(a) As used in this section, "gift card" means a prefunded tangible or electronic record of a specific monetary value evidencing an issuer's agreement to provide goods, services, credit, money, or anything of value. A "gift card" includes, but is not limited to, a tangible card; electronic card; stored-value card; or certificate or similar instrument, card, or tangible record, all of which contain a microprocessor chip, magnetic chip, or other means for the storage of information and for which the value is decremented upon each use. A "gift card" does not include a prefunded tangible or electronic record issued by, or on behalf of, any government agency; a gift certificate that is issued only on paper; a prepaid telecommunications or technology card; a card or certificate issued to a consumer pursuant to an awards, loyalty, or promotional program for which no money or other item of monetary value was exchanged; or a card that is donated or sold below face value at a volume discount to an employer or charitable organization for fundraising purposes.

(b) This section shall not apply to gift cards that are usable with multiple sellers of goods or services. This exception shall not apply to a gift card usable only with affiliated sellers of goods or services.

(2) On and after the effective date of this section, the issuer shall redeem the remaining value of a gift card for cash if the amount remaining is five dollars or less on request of the holder.

(3) It is unlawful for any person or entity to sell to a purchaser a gift card that contains a service fee, a dormancy fee, an inactivity fee, a maintenance fee, or any other type of fee.

(4) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1) (ccc).

## **PART 8 SWEEPSTAKES AND CONTESTS**

**6-1-801. Legislative finding, declaration, and intent.** (1) The general assembly hereby finds, determines, and declares that a vast number of sweepstakes and contests have been and

are being directed to Colorado consumers; that Colorado consumers may have paid millions of dollars to purchase goods or services to enter sweepstakes and contests based on representations created by the sponsors of those sweepstakes and contests; that these sweepstakes and contests may be targeted to certain vulnerable Colorado consumers; that there is a compelling need to curtail and prevent the most deceptive practices in connection with the promotion of sweepstakes and contests; that there is a compelling need for more complete disclosure of rules and operation of sweepstakes and contests in which money or other valuable consideration may be solicited; that preventing the deceptive promotions of sweepstakes and contests is a matter vitally affecting the public interest; and, therefore, that statutory regulation of sweepstakes and contests is necessary to the general welfare of the public.

(2) It is the intent of the general assembly to require that Colorado consumers be provided with all relevant information necessary to make an informed decision concerning sweepstakes and contests. It is also the intent of the general assembly to prohibit misleading and deceptive prize promotions. The terms of this part 8 shall be construed liberally in order to achieve this purpose.

**6-1-802. Definitions.** As used in this part 8, unless the context otherwise requires:

(1) "Contest" means any game, puzzle, competition, or plan that holds out or offers to prospective participants the opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill or any combination of chance and skill; except that "contest" shall not be construed to include any activity of licensees regulated under article 9 or article 47.1 of title 12, C.R.S., or part 2 of article 35 of title 24, C.R.S.

(2) "No purchase necessary message" means the following statement, set apart and in bold-faced type, and at least ten-point type: "No purchase or payment of any kind is necessary to enter or win this [sweepstakes or contest]."

(3) "Official rules" means the formal printed statement of the rules for the sweepstakes or contest, which statement shall be printed in contrasting type face at least ten-point type.

(4) "Prize" means cash or an item or service of monetary value that is offered or awarded to a person in a real or purported sweepstakes or contest.

(5) "Prize notice" means a written notice, other than an advertisement appearing in a magazine or newspaper of general circulation, delivered by the United States postal service or by a private carrier, that is or contains a representation that the recipient will receive, or may be or may become eligible to receive, a prize.

(6) "Represent" and "representation" includes express statements and the implications and inferences that would be drawn from those statements, taking into account the context in which the representation is made, including, but not limited to, emphasis, font, size, color, location, and presentation of the representation and any qualifying language. If the representation is made on or visible through a mailing envelope, the context in which the representation is to be considered, including any qualifying language, shall be limited to that which is visible without opening the mailing envelope.

(7) "Retail value" of a prize means:

- (a) A price at which the sponsor can demonstrate that a substantial number of the prizes or substantially similar items have been sold to the public in this state by someone other than the sponsor during the preceding year; or
- (b) If the sponsor is unable to satisfy the requirement in paragraph (a) of this subsection (7), then the retail value is no more than one and one-half times the amount that the sponsor paid or would pay for the prize in a bona fide purchase from a seller unaffiliated with the sponsor.
- (8) "Specially selected" means a representation that a person is a winner, a finalist, in first place or tied for first place, or otherwise among a limited group of persons with an enhanced likelihood of receiving a prize.
- (9) "Sponsor" means a person who offers, by means of a prize notice, a prize to another person in this state in conjunction with any real or purported sweepstakes or contest that requires or allows, or creates the impression of requiring or allowing, the person to purchase any goods or services or pay any money as a condition of receiving, or in conjunction with allowing the person to receive, use, compete for, or obtain a prize or information about a prize.
- (10) "Sweepstakes" means any competition, giveaway, drawing, plan, or other selection process or other enterprise or promotion in which anything of value is awarded to participants by chance or random selection that is not otherwise unlawful under other provisions of law; except that "sweepstakes" shall not be construed to include any activity of licensees regulated under article 9 or article 47.1 of title 12, C.R.S., or part 2 of article 35 of title 24, C.R.S.

**6-1-803. Prohibited practices and required disclosures.** (1) No sponsor shall require a person to pay the sponsor money or any other consideration as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain a prize or information about a prize.

(2) No sponsor shall represent that a person has won or unconditionally will be the winner of a prize or use language that may lead a person to believe he or she has won a prize, unless all of the following conditions are met:

- (a) The person shall be given the prize without obligation;
- (b) The person shall be notified at no expense to such person within fifteen days of winning a prize; and
- (c) The representation is not false, deceptive, or misleading.

(3) If a sponsor offers one or more items of the same or substantially the same value to all or substantially all of the recipients of a prize notice, the sponsor shall not:

- (a) Represent that such items are prizes or that the process by which such items are to be distributed is a sweepstakes or contest, or otherwise represent that such process involves a distribution by chance; or
- (b) Represent that the recipient is or has been specially selected unless it is true.

(4) No sponsor shall represent that a person has been specially selected in connection with a sweepstakes or contest unless it is true.

(5) No sponsor shall represent that a person may be or may become a winner of a prize, characterize the person as a possible winner of a prize, or represent that the person will, upon

the satisfaction of some condition or the occurrence of some event or other contingency, become the winner of a prize, unless each of the following is clearly and conspicuously disclosed:

(a) The material conditions necessary to make the representation truthful and not misleading, including but not limited to the conditions that must be satisfied in order for the person to be determined as the winner. All such conditions shall be:

(I) Presented in such a manner that they are an integral part of the representation and not separated from the remainder of the representation by intervening words, graphics, colors, or excessive blank space;

(II) Made in terms, syntax, and grammar that are as simple and easy to understand as those used in the representation; and

(III) Presented in such a manner that they appear in the same type size and in the same type face, color, style, and font as the remainder of the representation.

(b) The fact that the person has not yet won;

(c) The no purchase necessary message;

(d) The retail value of each prize;

(e) The estimated odds of receiving each prize pursuant to paragraph (c) of subsection (6) of this section;

(f) The true name or names of the sponsor, the address of the sponsor's actual principal place of business, and the address at which the sponsor may be contacted;

(g) If receipt of a prize is subject to a restriction, a statement that a restriction applies and a description of the restriction;

(h) The deadline for submission of an entry to be eligible to win each prize;

(i) If a sponsor represents that the person is or has been specially selected, and if the representation is not prohibited under subsections (3) and (4) of this section, then immediately adjacent to such representation, in the same type size and boldness as the representation, a statement of the maximum number of persons in the group or purported group of persons with this enhanced likelihood of receiving a prize;

(j) The official rules for the sweepstakes or contest.

(6) Unless otherwise provided by subsection (5) of this section, the information required by subsection (5) of this section shall be presented in the following form:

(a) The information required by paragraphs (b) to (h) of subsection (5) of this section may be presented either:

(I) Immediately adjacent to the first identification of the prize to which it refers and in the same type size and boldness as the reference to the prize; or

(II) In a separate section of official rules with a section entitled "consumer disclosure", which title shall be printed in no less than twelve-point, bold-faced type, which section shall contain only a description of the prize, and which text shall be printed in no less than ten-point type.

(b) In addition to the other requirements of this subsection (6), the no purchase necessary message shall be presented in the official rules and, if the official rules do not appear thereon, on any device by which a person enters a sweepstakes or contest or purchases any goods or services or pays any money in connection with a sweepstakes or contest. The no purchase necessary message included in the official rules shall be set out in a separate paragraph in the

official rules and be printed in capital letters in contrasting type face not smaller than the largest type face used in the text of the official rules. If a person is required or allowed to enter the sweepstakes or contest, or purchase any goods or services or pay any money in connection with a sweepstakes or contest, through a telephone call, the no purchase necessary message must be read to the person during the telephone call prior to accepting the entry, purchase, or payment.

(c) The statement of the odds of receiving each prize shall include, for each prize, the total number of prizes to be given away and the estimated odds of winning each prize based upon the following formula: "\_\_\_\_ [number of prizes] out of \_\_\_\_ prize notices distributed".

(d) All dollar values shall be stated in Arabic numerals and be preceded by a dollar sign.

(7) No sponsor shall subject sweepstakes or contest entries not accompanied by an order for products or services to any disability or disadvantage in the winner selection process to which an entry accompanied by an order for products or services would not be subject.

(8) No sponsor shall represent that an entry in a sweepstakes or contest accompanied by an order for products or services will be eligible to receive additional prizes or be more likely to win than an entry not accompanied by an order for products or services, or that an entry not accompanied by an order for products or services will have a reduced chance of winning a prize in the sweepstakes or contest.

(9) No sponsor shall represent that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments, or donations, or by entering a sweepstakes or contest more than one time.

(10) No sponsor shall represent that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless the representation is true.

(11) No sponsor shall represent that a prize notice is urgent or otherwise convey an impression of urgency by use of description, narrative copy, phrasing on a mailing envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim or be eligible to receive a prize, and the date by which such action is required appears immediately adjacent to each representation of urgency in the same type size and boldness as each representation of urgency.

(12) No sponsor shall deliver, or cause to be delivered, a prize notice which is in the form of, or a prize notice which includes, a document which simulates a bond, check, or other negotiable instrument, unless that document contains a statement that such document is nonnegotiable and has no cash value.

(13) No sponsor shall deliver, or cause to be delivered, a prize notice which:

(a) Simulates or falsely represents that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state or by any lawyer, law firm, or insurance or brokerage company; or

(b) Creates a false impression as to its source, authorization, or approval.

(14) No sponsor shall represent that a prize notice is being delivered by any method other than bulk mail unless that is the case or otherwise misrepresent the manner in which the prize notice is delivered.

(15) In the operation of a sweepstakes or contest, no sponsor shall:

- (a) Misrepresent in any manner the likelihood or odds of winning any prize or misrepresent in any manner the rules, terms, or conditions of participation in a sweepstakes or contest;
- (b) Fail to clearly and conspicuously disclose with all contest puzzles and games all of the following in the rules:
  - (I) The number of rounds or levels which may be necessary to complete the contest and determine winners;
  - (II) Whether future puzzles or games, if any, or tie breakers, if any, will be significantly more difficult than the initial puzzle;
  - (III) The date or dates on or before which the contest will terminate and upon which all prizes will be awarded;
  - (IV) The method of determining prize winners if a tie remains after the last tie breaker puzzle is completed; and
  - (V) All rules, regulations, terms, and conditions of the contest.
- (16) The prohibited practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.
- (17) No sponsor, requiring a person to respond in any manner to claim a prize, shall require the person to purchase insurance; except that the sponsor is in no way responsible for applicable state and federal taxes on the prize; and except that a sponsor may require proof of health insurance in order to claim a prize for travel or recreational activities. Such health insurance may not be acquired from the sponsor.

**6-1-804. Exemptions.** (1) The requirements of section 6-1-803 (5) and (6) shall not apply to solicitations or representations made in connection with the sale of goods:

- (a) By a catalog seller that derives at least thirty-seven and one-half percent of its annual revenues from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages that contain written descriptions or illustrations and sale prices for each item of merchandise, if the catalogs are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand; or
- (b) From a membership group or club selling books, periodicals, recordings, videocassettes and similar items that is regulated by the federal trade commission pursuant to 16 CFR 425.1 concerning the use of negative option plans by sellers in commerce.

## **PART 9**

### **COLORADO NO-CALL LIST ACT**

**6-1-901. Short title.** This part 9 shall be known and may be cited as the "Colorado No-Call List Act."

**6-1-902. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

- (a) The use of the telephone and telefacsimile ("fax") to market goods and services is widespread;



- (b) Many citizens of this state view telemarketing as an invasion of privacy;
- (c) Individuals' privacy rights and commercial freedom of speech should be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices;
- (d) Although charitable and political organizations are exempt from the provisions of this part 9 because of considerations of freedom of speech, the general assembly encourages such organizations to voluntarily comply with this part 9 when possible; and
- (e) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telephone solicitations by phone or fax.

**6-1-903. Definitions.** As used in this part 9, unless the context otherwise requires:

- (1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
- (2) "Colorado no-call list" means the database of Colorado residential subscribers and wireless telephone service subscribers that have given notice, in accordance with rules promulgated under section 6-1-905, of such subscribers' objection to receiving telephone solicitations.
- (3) "Conforming consolidated no-call list" means any database that includes telephone numbers of telephone subscribers that do not wish to receive telephone solicitations, if such database has been updated within the prior thirty days to include all of the telephone numbers on the Colorado no-call list.
- (4) "Conforming list broker" means any person or entity that provides lists for the purpose of telephone solicitation, if such lists shall have removed, at a minimum of every thirty days, any phone numbers that are included on the Colorado no-call list.
- (5) "Designated agent" means the party with which the public utilities commission contracts under section 6-1-905 (2).
- (6) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals. "Electronic mail" includes electronic messages that are transmitted within or between computer networks.
- (7) (a) "Established business relationship" means a relationship that:
  - (I) Was formed, prior to the telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber or wireless telephone service subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor; and
  - (II) Has not been previously terminated by either party; and
  - (III) Currently exists or has existed within the immediately preceding eighteen months.
- (b) "Established business relationship", with respect to a financial institution or affiliate, as those terms are defined in section 527 of the federal "Gramm-Leach-Bliley Act", includes any situation in which a financial institution or affiliate makes solicitation calls related to other financial services offered, if the financial institution or affiliate is subject to the requirements regarding privacy of Title V of the federal "Gramm-Leach-Bliley Act", and the financial institution or affiliate regularly conducts business in Colorado.

(8) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled switched data networks.

(9) "Residential subscriber" means a person who has subscribed to residential telephone service with a local exchange provider, as defined in section 40-15-102 (18), C.R.S. "Person" also includes any other persons living or residing with such person.

(10) (a) "Telephone solicitation" means any voice, telefacsimile, graphic imaging, or data communication, including text messaging communication over a telephone line or through a wireless telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

(b) Notwithstanding paragraph (a) of this subsection (10), "telephone solicitation" does not include communications:

(I) To any residential subscriber or wireless telephone service subscriber with the subscriber's prior express invitation or permission;

(II) By or on behalf of any person or entity with whom a residential subscriber or wireless telephone service subscriber has an established business relationship;

(III) For thirty days after a residential subscriber or wireless telephone service subscriber has contacted a business to inquire about the potential purchase of goods or services or until the subscriber requests that no further calls be made, whichever occurs first;

(IV) By or on behalf of a charitable organization that is required to and that has complied with the notice and reporting requirements of section 6-16-104 or is excluded from such notice and reporting requirements by 6-16-104 (6);

(V) Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or

(VI) Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas, or votes.

(c) "Telephone solicitation" includes any communication described in paragraph (a) of this subsection (10), whether such communication originates from a live operator, through the use of automatic dialing and recorded message equipment, or by other means.

(11) "Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones.

(12) "Wireless telephone service subscriber" means a person who has subscribed to a telephone service that does not employ a wireline telephone or that employs both wireline and wireless telephones on the same customer account.

**6-1-904. Unlawful to make telephone solicitations to subscribers on the Colorado no-call list -- requirements for telephone solicitations generally.** (1) (a) No person or entity shall make or cause to be made any telephone solicitation to the telephone of any residential subscriber or wireless telephone service subscriber in this state who has added his or her telephone number and zip code to the Colorado no-call list in accordance with rules promulgated under section 6-1-905.

(b) Any person or entity that makes a telephone solicitation to the telephone of any residential subscriber or wireless telephone service subscriber in this state shall register in accordance with the provisions of section 6-1-905 (3) (b) (II).

**(2) (Repealed)**

(3) No person or entity that makes a telephone solicitation to the telephone of a residential subscriber or a wireless telephone service subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller identification service when that person or entity's service or equipment is capable of allowing the display of the number.

(4) Persons or entities desiring to make telephone solicitations shall update their copies of the Colorado no-call list, conforming consolidated no-call list, or a list obtained from a conforming list broker within thirty days after the beginning of every calendar quarter, on or after July 1, 2002, or upon the initial availability and accessibility of the Colorado no-call list, whichever is earlier.

**6-1-905. Establishment and operation of a Colorado no-call list.** (1) The Colorado no-call list program is hereby created for the purpose of establishing a database to use when verifying residential subscribers and wireless telephone service subscribers in this state who have given notice, in accordance with rules promulgated under paragraph (b) of subsection (3) of this section, of such subscribers' objection to receiving telephone solicitations. The program shall be administered by the public utilities commission.

(2) Not later than January 1, 2002, the public utilities commission shall contract with a designated agent, which shall maintain the web site and database containing the Colorado no-call list. If no more than one entity bids on the contract, the public utilities commission may award, at its discretion, such contract.

(3)(a) Not later than July 1, 2002, the designated agent, using the designated state internet web site, shall develop and maintain the Colorado no-call list database with information provided by residential subscribers and, as soon as practicable after March 25, 2003, shall include information provided by wireless telephone service subscribers.

(b) The public utilities commission shall establish, by rule, guidelines for the designated agent for the development and maintenance of the Colorado no-call list so that the no-call list can easily be accessed by persons or entities desiring to make telephone solicitations, and by state and local law enforcement agencies. As soon as practicable after March 25, 2003, the public utilities commission shall promulgate rules that:

(I) Specify that there shall be no cost for a residential subscriber or wireless telephone service subscriber to provide notification to the designated agent that such subscriber objects to receiving telephone solicitations;

(II) Specify that there shall be an annual registration fee of not more than five hundred dollars for persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Colorado no-call list database. The public utilities commission shall determine such fee on a sliding scale so that persons or entities with fewer than five employees shall pay no fee. In addition, there shall be no fee charged to conforming list brokers or nonprofit corporations, as defined in section 7-

121-401 (26), C.R.S. The maximum fee shall be charged only to persons or entities with more than one thousand employees. Moneys collected from such fees shall cover the direct and indirect costs related to the creation and operation of the Colorado no-call list. Moneys from such fees shall be collected by and paid directly to the designated agent. The public utilities commission shall have the authority to annually adjust the fees below the stated maximum based on revenue history of the fees received by the designated agent. The designated agent shall provide means for on-line registration and credit card payment of fees charged pursuant to this subparagraph (II). Each such person or entity shall provide a current business name, business address, email address if available, and telephone number when initially registering for the no-call list. This information shall be updated when changes occur.

(III) Specify that the method by which each residential subscriber and wireless telephone service subscriber may give notice to the designated agent of his or her objection to receiving such solicitations, or may revoke such notice, shall be exclusively by entering the area code, phone number, and zip code of the subscriber directly into the database via the designated state internet web site or by using a touch-tone phone to enter the area code, phone number, and zip code of the subscriber via a designated statewide, toll-free telephone number maintained by the designated agent as a part of the Colorado no-call list;

(IV) Specify that the date of every notice received in accordance with subparagraph (III) of this paragraph (b) be recorded and included as part of the information in the no-call list;

(V) Require the designated agent to provide updated information about the Colorado no-call list program on the designated state web site, subject to supervision by the public utilities commission;

(VI) Prohibit the designated agent or any person or entity collecting information to be transmitted to the designated agent from making any use or distribution of subscriber information contained in the no-call list except as expressly authorized under this part 9;

(VII) Specify the methods by which additions, deletions, changes, and modifications shall be made to the Colorado no-call list database and how updates of the database shall be made available to persons or entities desiring such updates. Such methods shall include provisions to remove from the Colorado no-call list, on at least an annual basis, any telephone number that has been disconnected or reassigned.

(VIII) Require the designated agent to maintain an automated, on-line complaint system for residential subscribers and wireless telephone service subscribers to report suspected violations over the internet web site. The automated, on-line complaint system shall have the capability to collect, sort, and report suspected violations to the appropriate state enforcement agency electronically for enforcement purposes.

(IX) Specify that the no-call list shall be available on line at the Colorado no-call list web site to a person or entity desiring to make telephone solicitations if the person or entity has registered in accordance with the provisions of subparagraph (II) of this paragraph (b). The list shall be available in a text or other compatible format, at the discretion of the public utilities commission, but shall allow telephone solicitors to select and sort by specific zip codes and telephone area codes. Telephone solicitors and conforming list brokers shall not

receive additional compensation for distributing the Colorado no-call list, but are encouraged to freely distribute the Colorado no-call list at no cost.

(X) Specify such other matters relating to the database as the public utilities commission deems necessary or desirable.

(c) If the federal government establishes one or more official databases of residential or wireless telephone service subscribers who object to receiving telephone solicitations, the designated agent is authorized to provide appropriate data from the official Colorado no-call list exclusively for inclusion in an official, national do-not-call database. To the extent allowed by federal law, the designated agent shall ensure that the Colorado no-call list includes that portion of an official national do-not-call database that relates to Colorado.

(4) The state shall not be liable to any person for gathering, managing, or using information in the Colorado no-call list database pursuant to this part 9 and for enforcing the provisions of this part 9.

(5) The designated agent shall not be liable to any person for performing its duties under this part 9 unless, and only to the extent that, the designated agent commits a willful and wanton act or omission.

(6) As soon as practicable after March 25, 2003, the designated agent shall update the database, on an ongoing basis, with information provided by residential subscribers, wireless telephone service subscribers, and local exchange providers.

(7) No person shall place the telephone number of another person on the Colorado no-call list without the authorization of the person to whom the number is assigned.

(8) Repealed.

**6-1-906. Enforcement -- penalties -- defenses.** (1) On and after July 1, 2002, violation of any provision of this part 9 constitutes a deceptive trade practice under the provisions of section 6-1-105 (1) and may be enforced under sections 6-1-110, 6-1-112, and 6-1-113. No state enforcement action under this part 9 may be brought against a person or entity for fewer than three violations per month.

(2) Notwithstanding subsection (1) of this section, it shall not be a violation of this part 9 if:

(a) The person or entity has otherwise fully complied with the provisions of this part 9 and has established and implemented, prior to the violation, written practices and procedures to effectively prevent telephone solicitations in violation of this part 9; or

(b) The violation resulted from an error in transcription or other technical defect, not the fault of the person or entity, that caused the information in the no-call list as received by the person or entity to differ from the information that was or should have been included in the no-call list as transmitted by the designated agent.

(3) The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(4) No provider of telephone caller identification service shall be held liable for violations of this part 9 committed by other persons or entities.

**6-1-907. Acceptance of gifts, grants, and donations.** The public utilities commission may accept and expend moneys from gifts, grants, and donations for purposes of administering the provisions of this part 9.

**6-1-908. Severability.** If any provision of this part 9 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this part 9 which can be given effect without the invalid provision or application, and to this end the provisions of this part 9 are declared to be severable.

## **PART 10**

### **RESTRICTIONS ON USE OF LOAN INFORMATION – SOLICITATIONS**

**6-1-1001. Restrictions on use of loan information for solicitations.** (1) A person shall not reference the trade name or trademark of a lender or a trade name or trademark confusingly similar to that of a lender in a solicitation for the offering of services or products without the consent of the lender unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence containing the solicitation:

- (a) The name, address, and telephone number of the person making the solicitation;
- (b) That the person making the solicitation is not affiliated with the lender;
- (c) That the solicitation is not authorized or sponsored by the lender; and
- (d) That the loan information referenced was not provided by the lender.

(2) A person shall not reference a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation for the purchase of services or products; except that this prohibition shall not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.

(3)(a) A person shall not reference a loan number, loan amount, or other specific loan information that is publicly available in a solicitation for the purchase of services or products unless the communication clearly and conspicuously states in bold-faced type on the front page of the correspondence containing the solicitation:

- (I) The name, address, and telephone number of the person making the solicitation;
- (II) That the person making the solicitation is not affiliated with the lender;
- (III) That the solicitation is not authorized or sponsored by the lender; and
- (IV) That the loan information referenced was not provided by the lender.

(b) The prohibition in paragraph (a) of this subsection (3) shall not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.

(4) Any reference to an existing lender without the consent of the lender, and any reference to a loan number, loan amount, or other specific loan information, appearing on the outside of an envelope, visible through the envelope window, or on a postcard, in connection with any written communication that includes or contains a solicitation for goods or services is prohibited.

(5) It is not a violation of this section for a person to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

(6) A lender or owner of a trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the trade name, trademark, or loan information. The person seeking the injunction shall not have to prove actual damage as a result of the violation. Irreparable harm and interim harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees from the other party.

(7) For the purposes of this section, "lender" means a bank, industrial bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker, loan originator or holder of the loan, or other person who makes loans in this state, and any affiliate thereof, or any third party operating with the consent of the lender. For the purposes of this section, a person shall not be considered a lender based on the person's former employment with a lender.

(8) Nothing in this section shall apply to title insurance.

## **PART 11 COLORADO FORECLOSURE PROTECTION ACT**

### **SUBPART 1 GENERAL PROVISIONS**

**6-1-1101. Short title.** This part 11 shall be known and may be cited as the "Colorado Foreclosure Protection Act".

**6-1-1102. Legislative declaration.** The general assembly hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the general assembly that all violations of this part 11 have a significant public impact and that the terms of this part 11 be liberally construed to achieve these purposes.

**6-1-1103. Definitions.** As used in this part 11, unless the context otherwise requires:

(1) "Associate" means a partner, subsidiary, affiliate, agent, or any other person working in association with a foreclosure consultant or an equity purchaser. "Associate" does not include a person who is excluded from the definition of an "equity purchaser" or a "foreclosure consultant".

(2) "Equity purchaser" means a person, other than a person who acquires a property for the purpose of using such property as his or her personal residence, who acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:

(a) **Deleted, effective January 1, 2011**

(b) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if such consensual lien or encumbrance is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located prior to the recording of the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(c) By a deed from the public trustee or a county sheriff as a result of a foreclosure sale conducted pursuant to article 38 of title 38, C.R.S.;

(d) At a sale of property authorized by statute;

(e) By order or judgment of any court;

(f) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of a person identified in this paragraph (f); or

(g) While performing services as part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

(h) As a result of a short sale transaction in which a short sale addendum form, as promulgated by the Colorado real estate commission, is part of the contract used to acquire a residence in foreclosure and such transaction complies with section 6-1-1121.

(3) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

(4)(a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to a home owner's property and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(I) Stop or postpone a foreclosure sale;

(II) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;



(III) Assist the home owner in exercising a right to cure a default as provided in article 38 of title 38, C.R.S.;

(IV) Obtain an extension of the period within which the home owner may cure a default as provided in article 38 of title 38, C.R.S.;

(V) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;

(VI) Assist the home owner to obtain a loan or advance of funds;

(VII) Avoid or reduce the impairment of the home owner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(VIII) In any way delay, hinder, or prevent the foreclosure upon the home owner's residence; or

(IX) Assist the home owner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(b) The term "foreclosure consultant" does not include:

(I) A person licensed to practice law in this state, while performing any activity related to the person's attorney-client relationship with a home owner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(II) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(III) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent acting on behalf of any of the foregoing;

(IV) A person originating or closing a loan in a person's normal course of business if, as to that loan:

(A) The loan is subject to the requirements of the federal "Real Estate Settlement Procedures Act", as amended, 12 U.S.C. sec. 2601 to 2617; or

(B) With respect to any second mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subparagraph (A) of this subparagraph (IV) or is initially payable on the face of the note or contract to an entity included in subparagraph (III) of this paragraph (b);

(V) A judgment creditor of the home owner, if the judgment is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located

and the legal action giving rise to the judgment was commenced before the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(VI) A title insurance company or title insurance agent authorized to conduct business in this state, while performing title insurance and settlement services;

(VII) A person licensed as a real estate broker under article 61 of title 12, C.R.S., while the person engages in any activity for which the person is licensed; or

(VIII) A nonprofit organization that solely offers counseling or advice to home owners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

(5) "Foreclosure consulting contract" means any agreement between a foreclosure consultant and a home owner.

(6) "Holder of evidence of debt" means the person in actual possession or otherwise entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of the evidence of debt:

(a) The person who is the obligee of and who is in possession of an original evidence of debt;

(b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6), C.R.S.;

(c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

(d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

(7) "Home owner" means the owner of a dwelling who occupies it as his or her principal place of residence, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1) (b), C.R.S.

(8)(a) Except as otherwise provided in paragraph (b) of this subsection (8), "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and that is encumbered by a residential mortgage loan that is at least thirty days delinquent or in default.

(b) With respect to subpart 3 of this part 11, "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

(9) "Short sale" or "short sale transaction" means a transaction in which the residence in foreclosure is sold when:

(a) A holder of evidence of debt agrees to release its lien for an amount that is less than the outstanding amount due and owing under such evidence of debt; and

(b) The lien described in paragraph (a) of this subsection (9) is recorded in the real property records of the county where the residence in foreclosure is located

## **SUBPART 2 FORECLOSURE CONSULTANTS**

**6-1-1104. Foreclosure consulting contract.** (1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

### **Notice Required by Colorado Law**

\_\_\_\_\_ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.

\_\_\_\_\_ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home. You may, at any time, cancel this contract, without penalty of any kind.

**If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to \_\_\_\_\_ (name and address of foreclosure consultant) at \_\_\_\_\_ (address of foreclosure consultant, including facsimile and electronic mail address).**

**As part of any cancellation, you (the home owner) must repay any money spent on your behalf by \_\_\_\_\_ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the**

**Federal Reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.**

**This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal Department of Housing and Urban Development before signing.**

(6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:

- (a) Be on a separate sheet of paper attached to the contract;
- (b) Be easily detachable; and
- (c) Contain the following statement, printed in at least fourteen-point type:

Notice of Cancellation

(Date of contract)

To: (name of foreclosure consultant)

(Address of foreclosure consultant, including facsimile and electronic mail)

I hereby cancel this contract.

\_\_\_\_\_ (Date)

\_\_\_\_\_ (Home owner's signature)

(7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

**6-1-1105. Right of cancellation.** (1) In addition to any right of rescission available under state of federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate established by the Federal Reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

**6-1-1106. Waiver of rights - void.** (1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

- (a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;
- (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
- (c) Consent to venue in a county other than the county in which the property is located; or
- (d) Impose any costs or fees greater than the actual costs and fees.

**6-1-1107. Prohibited acts.** (1) A foreclosure consultant may not:

- (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;
- (b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the Federal Reserve plus two percentage points, with the total interest rate not to exceed eight percent per year;
- (c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;
- (d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;
- (e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;
- (f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or
- (g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

**6-1-1108. Criminal penalties.** A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

**6-1-1109. Unconscionability.** (1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

**6-1-1110. Language.** A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

### **SUBPART 3 EQUITY PURCHASERS**

**6-1-1111. Written contract required.** Every contract shall be written in at least nine-point, legible type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

**6-1-1112. Written contract - contents - notice.** (1) Every contract shall contain the entire agreement of the parties and shall include the following terms:

(a) The name, business address, and telephone number of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligation of the homeowner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with section 18-5-802

(6), C.R.S.;

- (d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;
- (e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;
- (f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
- (g) The terms of any rental agreement or lease;
- (h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;
- (i) A notice of cancellation as provided in section 6-1-1114; and
- (j) The following notice, in at least nine-point bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

### **NOTICE REQUIRED BY COLORADO LAW**

**Until your right to cancel this contract has ended, (Name) or anyone working for \_\_\_\_\_ (Name) CANNOT ask you to sign or have you sign any deed or any other document.**

- (2) The contract required by this section shall survive delivery of any instrument of conveyance of the residence in foreclosure, but shall not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

**6-1-1113. Cancellation.** (1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a contract with an equity purchaser until 12 midnight of the third business day following the day on which the home owner signs a contract that complies with this part 11 or until 12 noon on the day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(2) Cancellation occurs when the home owner personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by the home owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the home owner not to be bound by the contract.

(4) In the absence of any written notice of cancellation from the home owner, the execution by the home owner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the home owner did not cancel the contract with the equity purchaser.

**6-1-1114. Notice of cancellation.** (1)(a) The contract shall contain, as the last provision before the space reserved for the home owner's signature, a conspicuous statement in at least twelve-point bold-faced as follows:

**You may cancel this contract for the sale of your house without any penalty or obligation at any time before \_\_\_\_\_ (Date and time of day). See the attached notice of cancellation form for an explanation of this right.**

(b) The equity purchaser shall accurately specify the date and time of day on which the cancellation right ends.

(2) The contract shall be accompanied by duplicate completed forms, captioned "Notice of Cancellation" in at least nine-point bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:

(a) Be attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the contract is printed or in capital letters if the contract is typed:

#### **NOTICE OF CANCELLATION**

\_\_\_\_\_(Enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before \_\_\_\_\_ (Enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this Notice of Cancellation in the United States mail, postage prepaid, to \_\_\_\_\_, (Name of purchaser) at \_\_\_\_\_ (Street address of purchaser's place of business) NOT LATER THAN \_\_\_\_\_ (Enter date and time of day). I hereby cancel this transaction

\_\_\_\_\_(Date)

\_\_\_\_\_(Seller's signature)

(3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.

(4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

**6-1-1115. Options through reconveyances.** (1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the



equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:

- (a) The reconveyance contract complies in all respects with section 6-1-1112;
- (b) The reconveyance contract provides the home owner with a nonwaivable thirty-day right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least three separate occasions during such reconveyance contract;
- (c) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;
- (d) The equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner's monthly gross income; and
- (e) The price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 6-1-1119, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

**6-1-1116. Waiver of rights - void.** (1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:

- (a) Waive any of the rights specified in this subpart 3 or the right to a jury trial;
- (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
- (c) Consent to venue in a county other than the county in which the property is located; or
- (d) Impose any costs or fees greater than the actual costs and fees.

**6-1-1117. Prohibited conduct.** (1) The contract provisions required by sections 6-1-1111 to 6-1-1114 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

- (a) Accept from an home owner an execution of, or induce an home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;
- (b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the home owner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 6-1-1113 and 6-1-1114, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.

(4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

**6-1-1118. Criminal penalties.** A person who violates section 6-1-1117 (2) or (3) or who intentionally violates section 6-1-1117 (4) is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

**6-1-1119. Unconscionability.** (1) An equity purchaser or associate shall not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

**6-1-1120. Language.** (1) Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English; except that, if the equity purchaser has actual or constructive knowledge that the home owner's principal language is other than English, the home owner shall be provided with a notice, written in the home owner's principal language, substantially as follows:

**This transaction involves important and complex legal consequences, including your right to cancel this transaction within three business days following the date you sign this contract. You should consult with an attorney or seek assistance from a housing counselor by calling the Colorado foreclosure hotline at \_\_\_\_\_ [current, correct telephone number].**

(2) If a notice in the home owner's principal language is required to be provided under subsection (1) of this section, the notice shall be given to the home owner as a separate document accompanying the written contract required by section 6-1-1111.

**6-1-1121. Short sales - subsequent purchaser - definition.** (1) With respect to any short sale transaction in which an equity purchaser intends to resell the residence in foreclosure to a subsequent purchaser, the equity purchaser shall:

(a) Provide full disclosure to the home owner and to the holders of the evidence of debt on the residence in foreclosure, or such holders' representatives, of the terms of the agreement between the equity purchaser and any subsequent purchaser, including but not limited to the purchase price to be paid by the subsequent purchaser for the residence in foreclosure, which disclosure shall be made within one business day of identifying any such subsequent purchaser and in no event later than closing on the short sale transaction;

(b) Provide full disclosure to any subsequent purchaser and to any subsequent purchaser's lender, or such lender's representative, at the time of contract with the equity purchaser, of the terms of the agreement between the equity purchaser and the home owner, including but not limited to the purchase price paid by the equity purchaser for the residence in foreclosure;

(c) Comply with all applicable rules adopted by the Colorado real estate commission with regard to short sales; and

(d) Comply with section 38-35-125, C.R.S.

(2) As used in this section, a "subsequent purchaser" means any person who enters into a contract with an equity purchaser prior to the disbursement of the short sale transaction to acquire the residence in foreclosure and who acquires the residence in foreclosure within fourteen days after the disbursement of the short sale transaction.